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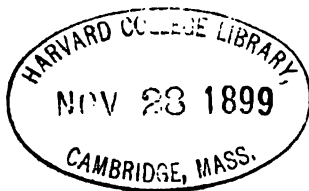
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SPEECH OF S. MALLET-PREVOST
FOR VENEZUELA

Saturday July 29 1899. — Pages 1115-1182
Monday July 31 1899. — Pages 1183-1251
Tuesday August 1 1899. — Pages 1252-1318
Wednesday August 2 1899. — Pages 1319-1385

5-6

PARIS

TYPOGRAPHIE CHAMEROT ET RENOARD

19, RUE DES SAINTS-PÈRES, 19

1899

Lord Justice Collins. — I suppose the Boca de Navios is the only channel through which big ships can pass?

Mr Mallet-Prevost. — I cited a number of extracts yesterday, my Lord, in which that fact was clearly established, and I propose to emphasize that by reading some further extracts today, which, while pointing out the importance of Barima Point, point out also the fact that it is the only channel that is navigable for large vessels. The first passage to which I shall call attention is in the seventh volume of the Appendix to the British Case at page 90. It is a statement made in the course of the Diplomatic Correspondence. It is a statement made by Lord Aberdeen, and a statement which is founded upon information given by Mr Schomburgk himself. It is opposite D on page 90.

“ Believing, then, that the undivided possession of the Orinoco is the object most important for the interests of Venezuela, Her Majesty's Government are prepared to cede to the Republic a portion of the coast amply sufficient to insure Venezuela against the mouth of this, her principal river, being at the command of any foreign Power. With this view, and regarding it as a most valuable concession to Venezuela; Her Majesty's Government are willing to waive their claim to the Amacura as the western boundary of the British territory, and to consider the mouth of the Moroco River as the limit of Her Majesty's possessions on the sea-coast. ”

That this statement of Lord Aberdeen was founded upon the reports of Mr Schomburgk himself will be evident by a reference to some extracts from those reports, and the first of those to which I invite the attention of the Tribunal is on page 5 of this same volume, about midway between B and C.

“ Taking namely the mouth of the River Barima as the place of departure ; the line of demarcation ought to be directed to the mouth of the River Amacura, in order to be able to insure the political importance which always would be attached to the mouth of the Orinoco, and to prevent stragglers from escaping into the republic of Venezuela; from thence to the mouth of its tributary, the brook or Caño Cayuni in 8° 25' north latitude, and following the latter to its sources, British Guiana secures the command of the easy water communication, which exist by means of creeks and channels (Esteros y Caños), between the River Pomeroon and the Orinoco. During the rainy season canoes and crafts, from the River Morocco, which do not draw more than four or five feet water, may reach the Orinoco opposite the north-eastern point of the Island Imataca, entirely by inland navigation. ”

It is the first part of this extract which refers to the importance of

the mouth of the Orinoco, but I read the closing lines as emphasizing the position which I took yesterday, that there is an inland navigation from the Moruca all the way to the Orinoco. The route which is there indicated by Schomburgk is of course through the River Barima into the Orinoco and from there up to the island of Imataca, which he mentions by name; and he speaks of this as an inland navigation, although it is a navigation which goes from the mouth of the Barima along the Orinoco up the stream. And that this is an inland navigation as I contended yesterday will be clear when I come to deal with the question as to where the mouth of the Orinoco is, when it will be shown that there is a distinct bar at this point, which makes the waters to the west inland waters.

The next passage bearing upon this point of the importance of Barima Point will be found on page 13 of this volume, about midway between D and E :

“ The pale or post at the mouth of the Barima was planted as an attestation of Her Majesty’s undoubted right of possession to that river. This point in the possession of Great Britain is of great value in a military respect. The peculiar configuration of the only channel (Boca de Navios), which admits vessels of some draught to the Orinoco. ”

and that answers the question of Lord Justice Collins,

“ Passes near Point Barima, so that if hereafter it became of advantage to command the entrance to the Orinoco, this might be easily effected from that point. This assertion is supported by Colonel Moody’s evidence, who visited this spot in his military capacity in the commencement of this century. ”

It is contended in the Case and in the Counter Case of Great Britain and it is contended before this Tribunal by Great Britain that this statement is a mistake; that Barima Point has no military importance and that it does not command that Point, and in support of the present contention of Great Britain to that effect affidavits of Mr Mc Turk and Mr im Thurn are presented to which I shall refer later. But I desire in that connection to emphasize the testimony here of Mr Schomburgk himself, upon whom Great Britain so strongly relies, and I point to the fact that Mr Schomburgk in the statement which he here makes is himself relying upon the statement of Colonel Moody, a military expert who was sent to Barima Point by Great Britain in the early part of this century for the very purpose of examining the Point as to its military importance.

The next passage is at page 33 of this same volume, volume 7. It is contained in a confidential letter of Mr Schomburgk to Governor Light. It is a letter which is so significant and is so full of important statements, that I venture to read it almost in full. It is impossible to read an extract from it without leaving something important out :

“ In my letter of this day’s date, I informed your Excellency upon what grounds I founded the right of possession of Her

Majesty to the Barima, and I have now to point out the importance which is attached to this position, should the British Government establish the Amacura as the boundary between British Guiana and Venezuela.

The River Orinoco may be termed the high-road to the interior of the territories of Venezuela and New Granada. It has at his mouth the appearance of an ocean, and articles of commerce may be transported on this stream for 400 or 500 leagues. Nearly 300 tributary streams, of more or less importance, flow into it, which may serve as additional canals and facilitate the commerce of the interior. Santa Fé de Bogota may be reached within a distance of 8 miles by one of its tributary streams, the Meta, and operations of commerce or war, combined with others from the Pacific, could be carried on by means of the vast plains or llanos. A small fleet may go up the Orinoco and the Meta within 15 or 20 leagues of Santa Fé, and the flour of New Granada may be conveyed down the same way. "

And when Mr Schomburgk makes that statement, Mr President, he is but echoing passages that I could multiply almost without number from the earlier period, showing the tremendous importance of the command of this river in connection with the whole interior.

This map shows the strategical importance of that point (referring to a map on the wall.) It shows the Meta river to which Mr Schomburgk here refers and it shows Bogota far away towards the Pacific coast, which according to Mr Schomburgk's statement is only within a few miles of this river and accessible from that river.

Lord Justice Collins. — Does not all that depend upon whether the only passage is the passage between the first of those Islands, Crab Island, and Barima Point?

Mr Mallet-Prevost. — It depends very largely upon that, my Lord.

Lord Justice Collins. — I did not know whether there was the same depth of water at the other side of those Islands as there is on the east side.

Mr Mallet-Prevost. — It depends very largely upon that; but let me call the attention of the Tribunal to this one fact, which is of great importance in this connection, and that is that today Great Britain is in possession of Trinidad. If there were any passages for large vessels through these northern mouths of the Orinoco, those mouths are commanded by Trinidad.

Lord Justice Collins. — I am not referring to those; I am referring to the mouths to the west, say, of Crab Island.

Mr Mallet-Prevost. — I shall refer to that in a moment, my Lord, and show by maps what the exact distance is.

Lord Justice Collins. — I ask for information, because I have forgotten it, but I have an impression that there is a channel equally deep outside one of those Islands.

Lord Russell. — This same letter of Schomburgk, opposite 8, would rather appear to suggest not. He says this :

“ And the only access to this vast inland communication for sailing vessels of more than 10 feet draft of water is by means of the Boca de Navios, which is *commanded from Point Barima.* ”

If there were a passage round the other Islands, it would not be commanded from Point Barima.

Lord Justice Collins. — I am under the impression that there is some statement that qualifies that or is adverse to that in some document I have read.

Mr Mallet-Prevost. — The only statement that qualifies that or is adverse to that is the statement of Mr Mc Turk which has been made in order to rebut all those statements of Schomburgk and everybody else who has written on the subject ; and I shall show in a moment when I have finished reading these extracts upon maps which have been prepared under British Authority exactly where it is and how wide it is and how far from Point Barima.

Lord Russell. — I think if you would come to that point, it would be desirable, because *ex facie*, the importance to Venezuela of the command of the Orinoco is obvious. It does not seem to me to need argument,

Mr Mallet-Prevost. — It is obvious, and it does not need argument, and yet Great Britain is today arguing that it has no importance ; is arguing that Barima Point has no military importance ; is arguing that it does not command the mouth of the Orinoco and it is because Great Britain has taken that position that I am compelled to weary the Tribunal by pointing to that evidence.

Lord Russell. — Whether it does or does not, if Barima Point is Great Britain's, whether it is important or not, Great Britain has it if it is hers.

Mr Mallet-Prevost. — Of course she has it today, my Lord ; she has taken it by force.

Lord Russell. — I am not referring to that. I mean if, in the result by the decision of this Tribunal, it should be found to be Great Britain's, then *cadit quæstio*, whether it is important or not to Venezuela.

Mr Mallet-Prevost. — My Lord, let me point out this fact. I have been dealing up to this point with the original Spanish title to this region and with the settlements of Spain and of Holland. I have shown and I think I have shown satisfactorily that at the date of the Treaty of Münster there was a Spanish settlement in the Orinoco.

Lord Russell. — I thought I was helping you. I almost desire to withdraw what I have been saying. You are apparently treating my observation as if I was interposing some obstacle.

Mr Mallet-Prevost. — I desire simply to make this observation, if you will permit me, and I make it in answer to the suggestion that has

been made by your Lordship to the effect that because Great Britain to day holds Barima Point—

Chief Justice Fuller. — He did not say that.

Lord Russell. — No, I did not say so at all.

The President. — No, the Lord Chief Justice did not say that at all.

Mr Mallet-Prevost. — I am calling attention, my Lord, to the military importance of this point for this reason, that I am dealing with a period prior to —

Lord Russell. — And I am telling you that it is obvious.

Mr Mallet-Prevost. — Great Britain, Mr President, has denied the unity of this region. Great Britain is today claiming Barima Point and Great Britain is claiming it because she says that the Dutch occupied it, and that the British have occupied it at a subsequent period. I have shown that the Dutch did not occupy it, and I am showing now that this region is a unity, that Spain held a part of that unity at Santo Thomé, and that long before the Dutch came there, irrespective of any questions of discovery and irrespective of any questions of settlement at Barima Point itself, that Barima Point because of its military importance, in the year 1648 and for long before that was a point the title to which was vested in Spain. That is the reason why I am now calling attention to the military and the political and the commercial importance of this Point, and that has absolutely nothing whatever to do with the present occupation of that Point by Great Britain.

The President. — Will you continue your argument about the letter which Mr Schomburgk wrote? You stopped, and you did not finish it, I think?

Mr Mallet-Prevost. — No. With your permission, Mr President, I will continue the reading of that letter?

The President. — Yes.

Mr Mallet-Prevost.

“ The River Barima falls into the south side of the Orinoco near the most eastern point of its mouth and in a direction almost parallel to the coast. ”

Right here, in passing, I might call attention to this testimony of Mr Schomburgk himself, that the Barima is a tributary of the River Orinoco.

“ Point Barima is, therefore, bounded to the west by the river of that name, to the north by the Orinoco, to the east by the Atlantic, and to the south by impenetrable forests. Colonel Moody considers this position susceptible of being fortified so as to resist almost any attack on the sea-side — the small depth of water, the nature of the tides, and its muddy shores, defend it. The Barima, and the uncultivated forests on marshy ground, present an impenetrable barrier against the interior, and debarkation from the Orinoco might be put under the fire of any

number of guns — and the land reproaches on that soil could be easily rendered inaccessible to an invading force.

This is the importance which Colonel Moody in a military respect has attached to this point, and which, so far as my knowledge goes in this matter, is fully born out by personal inspection during my late survey of the entrance to the Barima.

The Venezuelan Government, as at present organised, tottering in their interior relations, and embarrassed by a number of slaves who would hail the opportunity to shake off their fetters, hated and despised by the aborigines whom maltreatment and cruelties have alienated, would be an insignificant enemy — but in the hands of any of the maritime European powers, matters would assume another aspect.

France has attempted to establish a fortified position at the mouth of the Amazon near Macapa, which she claims as the eastern boundary of Cayenne. A settlement at this spot commands the commerce of the Amazon, and this no doubt, is the reason why this Power puts such importance upon its possession. Supposing that unforeseen circumstances should put France in occupation of Point Barima at the Orinoco, and that Macapa at the Amazon is ceded to her, she will then command the commerce of the two first rivers of South America, and hold the military keys of the northern provinces of Brazil and of the former Spanish provinces of South America, north of the equator, which territories will be always at the mercy of that power which commands the channels to their commerce.

Finally, trusting to the prospects of prosperity and a continued emigration to British Guiana, there could not be a more favourable position for a commercial settlement than Point Barima. The capital of Spanish Guayana is Angostura, situated a distance of 85 leagues from the mouth of the Orinoco, and the intricate navigation of that river presents numerous difficulties to foreign vessels going up the Orinoco as far as Angostura.

A commercial settlement established at the extreme point of Barima, where one part of the town would front the River Barima, and the other the Orinoco, would soon induce foreign vessels to dispose of their cargoes at the new settlement, and leave the further transport to the interior to smaller craft; naturally this premises the supposition that amicable relations and commercial treaties exist between Great Britain and Venezuela. ”

On the same page in a letter of November 30th, opposite D, in 1841 Schomburgk makes this further statement :

“ I beg leave to refer your Excellency, for the reasons which

induced me to select the River Amacura as the western boundary of British Guiana, to my letters dated the 23rd October, 1841; but since an exposition of the principal grounds upon which my proceedings were based might be perhaps of use to Her Majesty's Government in the negotiations which are likely to ensue with the Venezuelan Government, I have the honour to enclose herewith a memorial in which the grounds are recapitulated, chiefly with regard of Her Majesty's right of possession to the Barima — a point of more importance to Great Britain than I have ventured to make it appear in my memorial. ”

There is another passage of Schomburgk to which I will venture to call attention in the Venezuelan Case.

Chief Justice Fuller. — There is the last paragraph of that letter.

Mr Mallet-Prevost.

“ The importance of Point Barima will become evident from the inspection of the general map, and I have drawn your Excellency's attention (in my confidential letter of 23rd October, to some of the most weighty reasons why Great Britain should assert her right to it. I have to add, that if Great Britain relinquish her right to the territory west of the River Maroco, extending to the River Barima, the Venezuelan Republic may cede that territory, earlier or later (as Spain did the Florida and Louisiana), to a power which might prove a more dangerous neighbour to the British Colony of Guiana than the Republic of Venezuela. ”

That strongly emphasizes the point which I have been making. I am by no means exhausting the passages on this point and that is why I had not read the passage to which Chief Justice Fuller called attention. It is a point which we consider of great importance and on which I desire the Tribunal to have full information.

The President. — There is no question about the importance of the point.

Mr Mallet-Prevost. — Now I invite the Tribunal to the 20th page of the Venezuelan Case, first volume.

Chief Justice Fuller. — Is Moody's report here?

Mr Mallet-Prevost. — It is not. I for one have never seen it. The only knowledge we have of it is the reference made to it by Schomburgk. About the middle of page 20 there is a note to Schomburgk's edition of Raleigh's Guiana :

“ A strong battery established at Punta Barima, where the Dutch had as early as 1660 a fortified outpost, would prevent any vessel from entering the Orinoco drawing more than eight feet of water. Punta Barima, or Point Breme, as it was called by the Dutch, commands entirely the entrance of the Orinoco

by the Boca de Navios; and when on a late occasion the right of possession of this point was the subject of discussion between the British Government and the Republic of Venezuela, Punta Barima was appropriately and emphatically styled ' the Dardanelles of the Orinoco. '

I might point out in passing Schomburgk's statement here that as early as 1660 there was a Dutch outpost fortified at the Barima, is utterly without warrant.

The next passage to which I call attention is in the sixth volume of the British Case Appendix page 183; it is a statement by Governor Barkly.

" I need add little to what Sir Robert Schomburgk so forcibly stated at that time of the prospective importance, both in a military and a commercial point of view, of a site which effectually commands the entrance of one of the mightiest rivers in the world; but I may remark that it has gained, rather than lost, in importance since he wrote, for not only would the whole coasting trade of this Colony, as he pointed out, be at the mercy of any naval Power whose privateers could there rendezvous during a war, not only would the constantly increasing commercial intercourse between the Orinoco and the British West Indies generally be restricted to what could be carried on by the Colony of Trinidad through the shallower mouths of the Orinoco which open into the Gulf of Paria, but the supply of cattle, indispensable, since the recent abandonment of cattle-farming, for consumption in this and other Colonies, would be cut off, and both the inhabitants and the troops be left dependent on more remote and expensive sources for animal food. "

And in this same volume at page 204 is a statement by Lieutenant-Governor Walker in 1857; it is in paragraph 9, opposite B :

" I have carefully perused the correspondence upon the subject of our boundary which took place between Her Majesty's Government and the Venezuelan Minister in 1841-42, and as the Government of the Province of Venezuelan Guiana was allowed to remove the landmarks planted at Point Barima by Sir Robert Schomburgk, although without prejudice to the claims of Great Britain, and that point is at the entrance of the only channel of the Orinoco navigable by vessels of any great burthen, it is obviously desirable that all doubt should be removed as to its rightful possession. "

So that this statement that Barima Point commands the only channel, is not a statement founded only on the testimony of one witness, it is founded on Schomburgk, Barkly, Walker and every Englishman who has gone there for the purpose of inspecting it. Within the last year

or two Mr Mc Turk and Mr im Thurn have made affidavits for use before this Tribunal. Lord Granville in 1881 recognises this fact. I will not read the statement but he refers to this mouth and the importance of Venezuela's command of it, speaking of it as it has been spoken of more than once as the Dardanelles of the Orinoco. It is in the seventh volume of the British Case Appendix, pages 99 and 100. Now I will read the evidence that Great Britain presents today to rebut. It is in the Counter Case Appendix, page 402. This I think is the extract to which Lord Justice Collins referred a short time ago, when he spoke of the channel possibly not being commanded by Barima Point itself; opposite F, paragraph 12 :

“The said Case also refers to the value of Barima Point from a military and strategical point of view. As is well known, there are other entrances to the Orinoco than the one by Barima Point, and although it is true that the one opposite Barima Point which is known as Boca des Navios, or Great Ships Mouth, is the most used, yet the edge of the navigable channel, which is of itself of considerable width, is at least 5 miles from Barima Point, and owing to the nature of the soil and the wash of the sea, it would be practically impossible to erect any fortifications of sufficient strength to contain heavy artillery.”

Chief Justice Fuller. — He does not say there is another channel that has the depth of this.

Mr Mallet-Prevost. — No, he says this channel is five miles away.

Chief Justice Fuller. — Guns throw five miles.

Mr Mallet-Prevost. — And considerably further than five miles.

Lord Russell. — I suppose you are right. I do not recall the Attorney General making a great point of this at all. As more than one member of the court has intimated it is impossible not to see the command of the river is important.

Mr Mallet-Prevost. — If the Attorney-General had gone into it exhaustively he would have exposed the fallacy of his position but he referred to and relied upon it, skated over it as quickly as he could. It is a point made in the Case and Counter Case of Great Britain.

Lord Russell. — Well, I would not waste too much usefull strength about it, I think.

Mr Mallet-Prevost. — In line with the same extract which I read yesterday from the case of the “ Anna ” I want to call the attention of the Tribunal to a statement in Twiss's Law of Nations, Section '131, where he says :

“ Upon the like considerations of security, islands which have been formed by the accumulation of mud and drift at the mouth of a river, and which keep sentinel as it were over the approaches to the mainland, are regarded as natural or neces-

sary appendages of the Coast on which they border, and from which they are formed. ”

Now having shown the great importance of Barima Point from the military, commercial and political standpoint, I want to call attention to the answer that Great Britain has to make because of that importance that Barima Point belongs as of right to whoever owns the Orinoco itself. Schomburgk who made his survey saw the importance if possible of erecting between Barima Point and the Spanish settlements up the Orinoco River some natural barrier and Schomburgk's effort in somewhat different form has been carried on today. Today we have Great Britain presenting a map to this Tribunal which undertakes to make a separation of water basins and to draw some dividing line between the Amacura and Barima. Schomburgk's statement in this connection is interesting. It is to be found in the seventh volume of the British Case Appendix, page 13 : He had been speaking about the supposed evidences he found at Barima Point of Dutch occupation. He says :

“ These circumstances, as simple as they appear, contribute to attest the undoubted right of Her Majesty to the Barima, with all the tributary streams which flow into it.

As to the foundation for that I shall have to say something by and by when I come to speak of the history of the Barima region itself. Schomburgk continues :

“ But as in the demarcation of a territory it is of great importance to fix upon a line of boundary which is permanent and fixed in nature, and which cannot be destroyed by human hands I thought it advisable to claim the eastern or right bank of the River Amacura, preserving for her Majesty, or for such of her subjects as may deem it advantageous for their purposes, the same rights to the navigation and fisheries of that stream as the Venezuelans may claim hereafter. ”

It is in connection with that statement and in answer to the question put to me by the Chief Justice of the United States yesterday in regard to what are natural barriers that I venture to read these extracts from Phillimore, the 1st volume, page 305 of his 3rd edition on International Law. He says :

“ We know indeed also by recent experience that the phrase natural boundaries and rectification of frontiers have been used by powerful military states to cover unjust spoliation of the property of their weaker neighbor. ”

I can conceive of no case, Mr President, where the words of Phillimore have more fitting application than they have now in relation to Barima Point. Schomburgk had gone to Barima Point and recognized its importance and

in order to try and secure that point upon some pretext he goes and finds a natural barrier in the Amacura river. What other answer, Mr President, has Great Britain to present to the claim of Venezuela based upon the unity of this region?

Lord Russell. — Will you be good enough to develop that idea of unity a little more fully. I do not appreciate it at all.

Mr Mallet-Prevost. — My Lord, it seems to me the statement of a few simple facts in this connection ought to establish beyond any doubt the unity of this region. It has been stated over and over again.

Lord Russell. — What do you mean by unity? Do you mean the parts are interdependent or what?

Mr Mallet-Prevost. — So intimately connected with one another that communication from one part to another is so easy and so natural that one part depends so naturally upon the other part that whoever holds one part must necessarily hold the other for his own protection if for nothing else. Will your Lordship glance at the map?

Lord Russell. — I have been doing very little else for a long time.

Mr Mallet-Prevost. — There is the Waini River, a river navigable from its mouth to this point where rapids are met with. It is connected by the Mora passage with the Barima River, which is navigable not for small vessels or little corials or the artificial itabo to which I referred yesterday; this river (the Waini) and the branch which connects it with the Barima are both channels navigable by large vessels. So is the Barima River. The Barima River has a great depth of water at this point.

Lord Russell. — It seems that idea of unity ought to exist for the benefit of those who have the control of these rivers.

Mr Mallet-Prevost. — For the benefit of those who had the right from the start. If Spain had the right to the Orinoco and these rivers are so intimately connected that for her security she required the possession of those rivers then those rivers belong to her for the purpose of security.

When I speak of the unity I speak of it from the military, commercial and political standpoint and that unity is to be established and shown by the fact that these rivers communicated easily and that it is all one system, a system that is intimately united together. Mr President, it is not a matter of my invention. This has been pointed out and emphasized by the Attorney General himself. It is emphasized in the Case and Counter Case of Great Britain but what is sought to be done after establishing the connection of these various rivers on the coast, is to assume they are connected intimately with the Moruca and, the west of the Maruka and Pomeroon, implies the control of these rivers. I have endeavored to point out the absurdity of that. I pointed out yesterday there was a complete barrier here which served through the history of this Dutch Colony to prevent the spread of Dutch settlements in the direction of the Waini. Now having done that I call attention to the fact these rivers are undoubtedly connected, which is not denied by the other side. I call attention to the fact the Barima is connected with the Amacura and

Orinoco. The whole system is a single system; the command of Barima Point alone (assuming Great Britain was given command of other portions of these rivers) would in no way secure Venezuela. Suppose this point were given to Venezuela and Great Britain were allowed to retain the mouth of the Waini; she would still be holding a portion of this territory which is undoubtedly unity. There is the easiest communication by inland waters. The Barima River is capable of floating the largest vessels. That would be absolutely to shut one door and open another. Did we in no sense secure Venezuela against the command of these waters by a foreign power and these are the facts on which I rely to show that this region, whatever may have been its origin geologically, is today (and has been through all the history of the Dutch and British occupation) a single unity, an area, the command of a portion of which carries necessarily the command of the balance.

General Tracy. — Is it not true that steam-boat navigation is through the Mora passage from the Waini up the Barima?

Mr Mallet-Prevost. — Yes, it is not disputed.

Lord Justice Collins. — Do you carry the principle to this extent? Wherever a river runs between two countries, having rivers running into it and necessarily giving access to those rivers on either side, that by some rule of international law it is entitled to push its boundaries to the extreme point it can reach by those rivers?

Mr Mallet-Prevost. — In favor of a first comer; if two nations settle one on one side and the other on the other, if neither nation has a paramount title, if neither nation has a better right than the other nation, then a different rule might apply; but where a nation is the first comer (I put aside the question of discovery) —

Lord Justice Collins. — We get back to that; the first comer is the beginning of it.

Mr Mallet-Prevost. — Yes, Spain was the first comer in this region, and she is entitled to take as appurtenant to her settlement in the Orinoco whatever is necessary to secure her in that possession. General Harrison reminds me it is conceded on the other side that the Orinoco, whatever that phrase may mean, is a region which belongs to Venezuela. It belonged to Spain and was defended by Spain effectively.

Chief Justice Fuller. — The river is conceded to have belonged and to belong to Spain.

The President. — My present opinion is, though I may be mistaken, that rights should not be founded by theory or opinions about the natural boundaries of frontiers. You know about this question there are very different opinions what the natural boundaries of frontiers which must divide states or nations are. I think there is one opinion of Sir Robert Phillimore and other opinions of other writers; Emile de Girardin for instance, who has written a great book. It seems to me very difficult on the basis of such a theory to define the natural frontiers or boundaries of states or of nations. I think it would be better perhaps to prove these

frontiers by historical facts and documents and not by some theory of a very celebrated lawyer or writers of international law. That is only my personal opinion about the theory of natural boundaries. There are very different opinions about that. What is the actual boundary? Is it for some nations have adopted the theory to defend their rights. Other nations, European nations, adopted the theory to attack their neighbours. Well I think it would be very difficult indeed from the point of view of such a theory to find any rights.

Mr Mallet-Prevost. — I quite agree with your Excellency. The question of natural barriers is very complicated and has very different applications — and I might say very different applications in Europe from applications in other continents which have been more recently opened and settled. There are conditions when the determination as to what are natural barriers, and what the purposes of those barriers are, would be very difficult.

The President. — Quite impossible.

Mr Mallet-Prevost. — While I quite agree with your Excellency in that statement, I must be permitted to say that there are some cases where the question is so clear that there can be no dispute. There are some cases (I submit the present is one), where there is no dispute as to who is the first comer; where there is no dispute in whose favor questions of security are first to be invoked; and I submit, Mr President, that in the case at bar where it has been shown (and it is admitted by the other side) that Spain discovered and first occupied these regions, and where there is no question, and can be no question, that there is a certain region about that first settlement which is a unity; that, however far beyond that region the rights of Spain may extend, she has clearly a right to go at least to the limits of that which is a unity beyond dispute. Therefore it is that while agreeing with your Excellency as to the difficulty of applying this principle of natural boundaries in many instances, I submit in the present instance there can be no dispute and its application is clear and simple. It is for that reason before I enter on the discussion of the history of these regions I want to call attention to the fact that before the history of these regions was written; before anyone set foot upon them, there were certain conditions there that had an influence upon the subsequent history and occupation, and it is because of those conditions that we are able to understand the meaning of historical acts to which reference will be later made. General Harrison reminds me of a most important admission, with regard to the concession made to us by Great Britain that Spain effectively held the Orinoco, that is that she held it to its mouth, and both banks of it, and when a subsequent attempt is made to limit us to a part of the Orinoco shutting us off from the right bank below the mouth of the Amacura, that is an effort to take away from us territory which it has been admitted belonged of right to Spain.

Mr President a great effort has been made by our adversaries to define

the delta of the Orinoco in such a way as to deprive us of that part which it is alleged is not the delta of the Orinoco. I do not propose to go extensively into that question, but only to refer to it in passing. Venezuela has submitted an affidavit of Mr Turnbull, who is an engineer competent to speak on these matters, in the third volume of the Venezuelan Counter-Case, page 323. I will not trouble the Tribunal to read it. I should like the reference on the record in which Turnbull explains his theory as to the formation of the Orinoco delta and states it. In his opinion there is a delta to the north of the main stream and a delta to the south. He regards the deposit about the Amacura and Barima as part of this delta. On the other hand Great Britain submitted affidavits of Mr im Thurn and Mr Grant contradicting these views and contending that the delta of the Orinoco lies to the north of the main stream. This contention is based on the assumption that whatever deposit is made in the region of the south of the main stream is a deposit that comes not from the Orinoco itself but is carried along the coast of Guiana all the way from the Amazon river.

Chief Justice Fuller. — But at what period in the history was that earth transferred from the Amazon according to this theory.

Mr Mallet-Prevost. — I was about to remark in that very connection Chief Justice, that it seems to me a very small defence to make to the position of Venezuela in this matter.

Lord Russell. — Has it anything to do with the question at all?

Mr Mallet-Prevost. — I think not, I think it is absolutely immaterial.

Lord Russell. — Why not leave the things as they are and have been for two hundred years?

Mr Mallet-Prevost. — That is the point I was about to make and if the Tribunal has taken that view of it I have nothing more to say on the subject. It does not make a particle of difference what it was two hundred years ago.

Lord Russell. — I confess I am startled to be told there was a delta on the south side. I thought the delta was formed by the waters of the river passing through a given portion of land before it makes its final escape into the lake or sea.

Mr Mallet-Prevost. — In view of your Lordship's first remark I intended to pass this by completely. In view of your second remark I do not know that I had better not say what I had to say.

Lord Russell. — By all means say it.

The President. — Yes.

Mr Mallet-Prevost. — I want to point out two things; in the first place more perfectly what has been pointed out by the Lord Chief Justice's question, that it is a very immaterial question as to what may have been the condition here in geological times. I want to point out this further fact, that it makes not a particle of difference where the material that makes up these shores came from. What we have to deal with is the actual condition; what is there, what is the relation of one part to the

other, not where did they come from. If the definition of what is a delta is to depend on the origin of the detritus in the delta, then we are driven to this; the delta of the Orinoco is the delta of the Amazon, and we must treat it in this way because it is suggested the current that comes along the coast brings it from the Amazon and deposits it here. If that is so then we are confronted with the absurdity we have the delta of the Amazon at the delta of the Orinoco.

Chief Justice Fuller. — Is there any magic in the name of “delta”?

Mr Mallet-Prevost. — “A rose by any other name would smell as sweet”, and it seems to me to make little difference whether we call it the mud which it itself carries, or the mud which comes from some other quarter. If our friends are correct, it comes from the Amazon and is deposited there; it is deposited there, according to their own theory, because of the Orinoco.

The main stream of the Orinoco flows out at the Ships’ Mouth and as the Attorney General pointed out it goes for miles into the ocean. Then comes this tremendous current from the south-east bringing mud from the Amazon; it strikes the current of the Orinoco and it is checked; the moment it is checked it deposits its silt.

Lord Justice Collins. — Your point is that the river that you own and all rivers running into it to which you have access from it, constitute a unity and that as first possessor you are entitled to the territory which you can reach from your river by passing along those other rivers. That is the first point. Now that being so you have to define your river. Where does your river end? The place of the delta in this discussion is to define the point at which the Orinoco ends. From and after the point at which it ends, it does not matter if there is access or not because it does not come within your primary theory whether you have access to it or not. Does not the point simply come to this that whether the delta embraces the inlet of the Barima into the Orinoco or not, if the Barima falls into the Orinoco then your theory of possession following upon right of access through the river which belongs to you covers the Barima. If the Barima does not flow into the Orinoco your theory based on the right of access does not cover the territory you can reach through the Barima.

Is it not on that point only that this delta discussion has any bearing at all?

Mr Mallet-Prevost. — I think so. I propose to call attention to the two points made by Great Britain in defence to the position taken by Venezuela. Your Lordship has pointed out more clearly than I could do that the fact that Great Britain’s attitude as to the detritus —

Lord Justice Collins. — After all it is only meeting a far-fetched theory by tracing it back to see if it is founded in fact or not. In other words, it is meeting one far-fetched theory by another far-fetched theory. Your original theory is itself what we should call in Greek *meteoros* or entirely in the air. You have to go to the origin of things, and if you go to the origin then we have to go back to the origin of the delta to see if you

are right in your far-fetched theory, but that is its only bearing upon the discussion determining where in theory does the Barima end.

Mr Mallet-Prevost. — Precisely.

Lord Russell. — Or where does the Orinoco end.

Mr Mallet-Prevost. — Precisely, but at the same time I want to throw the burthen of it where it properly rests, as it does not rest on me. It is no far-fetched theory of mine though I may have to appeal to a far-fetched theory in order to meet their far-fetched theory. The far-fetched theory is the far-fetched theory of Great Britain and they are driven to a far-fetched theory because they have no near-fetched theory.

Sir Richard Webster. — I do not think that you will find that Great Britain has ever contended that.

Mr Justice Brewer. — I suppose it comes to this. The question is, where is the bar?

Mr Mallet-Prevost. — Then I propose to say something on that. The Amacura is admitted to be a tributary of the Orinoco in the 3rd map of the British atlas.

Lord Russell. — I do not think it is admitted.

Mr Mallet-Prevost. — I beg your Lordship's pardon. I must call attention to that map which is a division of the drainage basins, and if this amounts to anything I am entitled to invoke it in my own behalf. Here is the Barima-Waini basin, separated from the Amacura basin. You will see that this map draws a line separating the Barima from the Orinoco and the Barima is included in the region here marked as the Barima-Waini basin and the Amacura is left to the west in a region which is clearly intended for the Orinoco basin. The Attorney General has admitted and, of course, it is a question that could not be disputed, that the Aguire is a tributary of the Orinoco. So is the Imataca beyond it. The Amacura is placed on this map in the same region with those two rivers and it is an admission and a fact that could not be contradicted, to-wit : that the Amacura is itself in a category with those other rivers and a tributary of the Orinoco. Some point has been endeavored to be made from the fact that these rivers, the Imataca, the Aguire, the Barima and the Waini all take their source in the Imataca mountains and run first in an easterly direction and are thereafter diverted in their course, flowing northwestwardly toward the Orinoco and the sea. Now, if there be any foundation in that argument it is an argument which applies to all these rivers alike. If that fact is to separate these rivers from the Orinoco and to constitute them a basin by themselves they must be put in a separate category and we cannot consider the Imataca or the Aguire.

Mr Justice Brewer. — Whatever may be the scientific reason of it, they start in an easterly direction and then turn westerly towards the Orinoco.

Mr Mallet-Prevost. — Yes all of them.

Mr Justice Brewer. — All alike.

Lord Russell. — I do not understand this map sufficiently well to

follow this. Is it clear that it is intended to show that the Amacura is a tributary of the Orinoco?

Mr Mallet-Prevost. — If we are to interpret the map by what it purports to say on its face, certainly yes. It was referred to yesterday and your Lordship made objection to my use of it saying that it was a map showing division into drainage basins. I acquiesced in that fact and so did the Attorney General. Now that I appeal to it for the same purpose I am met with an objection from my learned friends and from the bench that it is not.

Sir Richard Webster. — No, that is not the objection raised by itself.

Mr Mallet-Prevost. — If this is a division of this country into drainage basins then I say this map admits that the Amacura is within the drainage basin of the Orinoco. My eyes cannot deceive me and, if they did, I then appeal to the eyes of the Arbitrators who have the same map before them.

Lord Russell. — The division line appears to be drawn midway between the mouth of the Amacura and the Barima.

Mr Mallet-Prevost. — Precisely; marking the watershed, the division of the waters, those flowing into the Barima from those flowing into the Amacura.

Lord Russell. — Flowing inside the other line. Whether it conveys it was flowing into the Orinoco is a different point.

Mr Mallet-Prevost. — Do I understand your Lordship to suggest that this map divides a portion of this territory into drainage basins and does not purport to divide the balance — is it a partial map?

Lord Russell. — No.

Mr Mallet-Prevost. — Assuming that it is intended to deal with the whole of this on its face I think I am entitled to draw certain conclusions from the facts there stated and one is that the Amacura is a tributary of the Orinoco.

Chief Justice Fuller. — And another that the Barima is not?

Mr Mallet-Prevost. — And another that the Barima is not. There is a distinction.

Sir Richard Webster. — The map is meant to show this fact that there is a water division between the Amacura and the Barima and whatever conclusion my learned friend may like to draw from that, he can.

Mr Mallet-Prevost. — I draw no conclusion except what is on the map.

Sir Richard Webster. — I thought you said it was an admission.

Mr Mallet-Prevost. — It is an admission and I say it again. Here, we have the Orinoco basin between the blue lines bounded on each side. That is one; then there is another designated as the Barima-Waini basin; and then another designated as the Pomeroon-Moruca basin; that is the third; and there is another designated as the Essequibo basin, which includes the Cuyuni and the Massaruni.

Lord Russell. — Undoubtedly it does appear to show as if the Amacura was treated as flowing into the Orinoco basin.

Mr Mallet-Prevost. — Yes, that is what I was calling attention to but which my learned friend does not seem willing to admit.

Sir Richard Webster. — I never said anything of the kind. I said the map shows it.

Lord Russell. — I must say I am not sufficiently informed upon these matters. Does the division of a watershed in the Orinoco basin mean the river in that basin is a tributary of the Orinoco.

Mr Mallet-Prevost. — I should think so, my Lord. I know of no other definition of basin. Drainage basin means territory drained by a river and its tributaries and I know of no other definition. At the same time, I am prepared to be enlightened by my learned friend on the other side if he has any authority.

Now in this connection I desire to call attention to a number of maps in the same atlas and the first of them is N° 44 of the British atlas. I can show it from our atlas but I prefer to take British authority and call attention to a number of Schomburgk's maps which indicate that the mouth of the Orinoco is at Point Barima and indicates the width of the channel. Some of the maps show it better than others. On this first map N° 44 the full significance of the sand bar is not entirely evident, but I call attention to the fact that Schomburgk evidently regarded the Barima River as flowing into the Orinoco. He writes the words "Boca de Navios" in a position about which there can be no dispute and this corresponds with the statement of Schomburgk himself to the effect that the Barima is a river which flows into the Orinoco.

Now the next map is N° 46. Another map by Schomburgk which shows a little more of the coast line but entirely coincides with the first map. It is largely repetition of the first but it shows the whole extended region to the north of the Orinoco.

Sir Richard Webster. — I may tell my learned friend that it is the same print.

Mr Mallet-Prevost. — Yes, so it may be, but it covers a little more ground I think.

The next map — and this is a very important one in this connection, is map N° 47, which is Schomburgk's Physical map as it is called and it shows very clearly the channel and the location of that channel.

It will be seen that the Island of Cangrejos or Crab Island is only a small part of a large sand bank which comes out of the water, but that sand bank extends a long distance towards Barima Point and we can get from a map which is founded on this one the exact difference from Barima Point to the edge of this channel. The dotted line represents a sand bank so that the channel is right opposite Barima Point.

Chief Justice Fuller. — Is there a hydrographic map here?

Mr Mallet-Prevost. — There is a special survey of the Barima mouth by Schomburgk which is one of the maps to which I was going to refer.

Chief Justice Fuller. — Only giving the depth of water at the mouth of the Orinoco.

Mr Mallet-Prevost. — Some of these I shall have to call attention to.

Sir Richard Webster. — We will get a copy of the Admiralty chart. We have one.

The President. — Are you accepting, Mr Mallet-Prevost, these maps of Schomburgk as quite true.

Mr Mallet-Prevost. — Upon this point, your Excellency, yes. Now the map at page 49 is a map which represents some of these soundings. It is a map by Schomburgk and shows the depth of the water at various places, but does not give the depth at any very great distance from Barima Point. It gives it in the mouth of the Barima itself and at various places opposite the Point of Barima.

Lord Russell. — Is the pink line supposed to mark the land or what.

Sir Richard Webster. — I think it is high water mark but I am not quite sure.

Lord Russell. — I see it is three fathoms close in.

Sir Richard Webster. — No they are not fathoms, the soundings are in feet, my Lord.

Mr Mallet-Prevost. — It is very shallow water there.

Lord Russell. — Is there any scale on this.

Mr Mallet-Prevost. — Yes, in the right hand lower corner.

Mr Justice Brewer. — Up the Barima it is twenty feet.

Mr Mallet-Prevost. — Map No. 41 is a map based on these surveys which can be measured and shows exactly what the channel was. My friend, Mr Soley, calls my attention to the fact, which is important, that No. 49 only gives the soundings off Barima for a distance of one mile from that point.

Now we come to 41 and 42 which are practically the same though one is a little later than the other, and we have here reproduced the same configuration as to sand banks which was in the physical map of Schomburgk. By taking the scale it will be seen that the edge of this channel which Mc Turk said was five miles off is one mile from Point Barima and the total width of that channel is only five miles.

Lord Justice Collins. — In the letter by a naval officer in 1857 he says :

“ I may here state that the “ Pheasant ” anchored as near to Point Barima as she could approach with prudence having only nine feet water at half ebb and then she was quite three miles from the Point and considerably inside the ship channel which is nearly five miles from the Point. Any vessel which could cross the bar could consequently pass outside the range of the heaviest guns that could be placed on Point Barima. ”

Mr Mallet-Prevost. — Then in the seventh volume of the British Case Appendix at page 82 is a very important statement by Sir Robert

Porter as to the location of this bar and which ought to settle the question once and for all where the river stops and where the ocean begins :

“ From what I have already said, it becomes my official duty to represent to the Executive of this Republic — ”

this is a most important statement and I invite the attention of the Tribunal to it —

“ the indispensable necessity (and that without further delay) of placing a conspicuous beacon on Cape Barima, the point forming the grand mouth of the Orinoco to the south-south-east, where I am given to understand it could be done with the greatest facility and to the greatest advantage. The object would effectually prove a sure mark, as also safeguard for all vessels seeking proper entrance into this vast river. And it becomes the more to be required from the great difficulty experienced by all navigators in finding the entrance, as the coast presents the same appearance for many leagues together, and at this day has not a single mark of any kind to denote it.

The Island of Cangresos forms the other side of the great mouth, situated at a distance of about 8 leagues from the Cape to the west-north-west, whose dangerous sand banks reduce the only navigable channel to scarcely 3 miles in width — ”

the Tribunal will notice that I have said *five* miles while Sir Robert Porter says only *three* —

“ which commence on passing the bar just without Cape Barima, soon becoming difficult and intricate, particularly so after ascending for about three leagues — ”

and so on.

Here is the statement made by Sir Robert Ker Porter as to the width of the channel being *three* miles and as to the location of the bar outside Point Barima.

Lord Justice Collins. — I suppose that refers to the navigable channel and not to the distance from Point Barima.

Mr Mallet-Prevost. — No, my Lord.

Mr Justice Brewer. — He says it is eight leagues from Barima to Crab Island.

Lord Justice Collins. — And that there is a channel that is a navigable channel for three miles somewhere.

Mr Mallet-Prevost. — If in giving the distance from Crab Island he gives it as eight leagues then that must be a mistake, because the distance is quite clearly about eight miles and not twenty-four. The width of the navigable channel was of great importance at the time he wrote because he was speaking as to the navigation of the Orinoco and as to the improved safety with reference to the channel in that connection. His

statement that the bar of the river is beyond Barima seems most important and to decide that the ocean begins and the river ends there in his opinion.

Mr Justice Brewer. — He says :

“ After ascending for about three leagues where the channel frequently changes its course on account of the shifting sands — ”

I do not know how much of a change that may be, but, to take the Missouri River which I know very well, it changes every year, owing to the shifting sands, and the shifting sands here may have made it at one time three miles and at another two miles.

Mr Mallet-Prevost. — That might easily be and probably is the case; but the fact is however that channel may change from time to time as to its exact location and as to its width the bar of the river must always be more or less at the same point and that would be where the waters of the river are checked by coming in contact with the water of the ocean and they drop the sediment which they carry and that forms the bar and that determines the outlet of the river.

Lord Russell. — Is there any passage which fixes the position of that bar with reference to the points of the compass off Point Barima and how it lies ?

Mr Mallet-Prevost. — Sir Robert Porter does not state it, my Lord, and none of the maps show it.

Sir Richard Webster. — I have sent for the Admiralty chart which may give you some information.

Mr Mallet-Prevost. — I should like to have it very much : but there is no question, however wide the bar may be, whatever may be its general trend, that it is a bar which lies outside of Point Barima and it must lie more or less at right angles to the current of the stream at that point. It may change that position from time to time slightly, but that must be its general position and it could not be otherwise. Of course, there might be some extraordinary flood at some time in the Orinoco which would temporarily move the bar one way or the other but that must be its ordinary and usual location.

Now in this connection, and having quoted this, I shall pass from this geographical discussion and call attention, for a moment, to the definition of the mouth of a river which is given by Lord Stowell in the case of the 3^d Robinson at page 34 :

“ The embouchure or mouth of a river is the spot where the river enters the open space to where the sea flows and where the coast projects no further, ”

and having that definition in mind it is difficult for me to understand how there can be any question as to where the mouth of the Orinoco lies.

There is a great deal of important testimony which I might cite in sup-

port of the position I have here taken. It is the testimony of witnesses through the whole of the seventeenth and eighteenth centuries, who speak of the Barima as a river tributary to the Orinoco, as a river which flows into the Orinoco and testimony of that kind is not to be disregarded and not to be treated lightly. It goes to show what was the consensus of opinion through the whole time and an opinion that was a sort of practical opinion, an opinion that was formed and based upon the navigation of those rivers.

Now how did the people of that time regard it? It was always regarded by them as a river which was an inland river; that is to say, the passage from the Barima was up the Orinoco and when voyages were made through these rivers — the Waini and the Mora Passage into the river above — Schomburgk himself refers to it as an inland passage and the Barima is in turn spoken of as a tributary of the Orinoco. I will not read those but I will give the references so that they may appear on the record. I need hardly say, of course, that I shall not give an exhaustive list.

There is a statement by Iturriaga, in 1747, the 2nd volume of the Appendix to the British Case, page 53, between B and D.

There is another statement by Alvarado in the year 1755 in the same volume, page 113, opposite B.

There is another statement in 1760 by Valdes, 2nd volume of the Appendix to the British Case, page 187 opposite A.

There is another statement by Solano in 1761 in the same volume, page 204.

There is a statement by Centurion in 1770 4th volume of the Appendix to the British Case at page 71 opposite E.

There is another statement in the same volume at page 72 opposite B also by Centurion.

There is a statement in 1797 in the 5th volume of the Appendix to the British Case, page 164.

There is one by Mc Creagh in 1802, in the 5th volume of the Appendix to the British Case at page 173 opposite C.

These statements might be indefinitely multiplied in the same connection as to what has been through all these centuries regarded as the mouth of the Orinoco.

I might appeal also to the maps which appear in the atlases for Great Britain and for Venezuela. I think that where those atlases have any approach whatever to accuracy in geography, they show one of two things; either that the Amacura and the Barima flow directly into the Orinoco or it shows them as forming part of this delta region; as for instance, in the map of Sir Walter Raleigh where he makes them appear as clearly mouths of the Orinoco. I state confidently and unequivocally, going through every one of the maps that appear in these atlases that have any pretence to accuracy whatever, it will be found that my contention on this point is sustained.

I pass now from the geography to the history of these regions subsequent to the year 1648 and I propose first to examine the history of the Moruca-Pomeroon region — I mean the region which lies about those two rivers. My object in examining that history is this : it shows that during almost the entire period there was nothing there but a small trading post.

Mr Justice Brewer. — Do you take that separately from the Essequibo?

Mr Mallet-Prevost. — Yes. It shows that during the whole Dutch occupation that post was regarded by the Dutch as an outpost and as marking, practically, its frontiers. I say marking them practically. I shall consider later certain claims that were made with regard to territory lying somewhat beyond, but that in no way detracts from the statement I have made that for practical purposes this region was regarded as marking the limits of Dutch possession and in fact it did mark them.

Lord Russell. — That is the Pomeroon and the Moruca together?

Mr Mallet-Prevost. — Yes ; everything that lies about those rivers which is to the east or southeast of that barrier to which I referred yesterday. For the purpose of convenience, the history of this period may be divided into two general periods ; the first from 1648 to 1689, and the second from 1689 to 1814.

I have taken the first period separately because it includes the only two efforts by the Dutch to establish in the Pomeroon anything more than a mere trading post.

It will be convenient to further subdivide the first period into four periods ; a period prior to the first colony ; the period during which the first colony existed ; the period between the first and second colonies ; and the period covered by the existence of the second colony.

The first of these periods is from 1648 to 1657 and I say confidently with regard to that period that there is absolutely nothing in the evidence to point to any Dutch occupation there with the single exception of a statement made by Major John Scott ; and this statement is fully explained by showing that he had in mind the colony that was founded there subsequently. He confounded the dates. With that exception there is not a particle of evidence indicating the presence of any Dutchmen whatever either in the Moruca or Pomeroon.

In 1657 there was a proposition by the Company to colonize in Guiana and I call attention to an extract in the first volume of the Appendix to the British Case at page 137. These are conditions for colonists provisionally adopted by the West India Company in 1656 and they are the first indication, as I say, that we have of anything in this region.

“ Whereas the Directors of the Zeeland Chamber of the Chartered West India Company have now for many years past endeavoured by all conceivable means and ways, both by the resources of the Chamber itself, as well as by contracting with private persons, to increase, not only its trade and commerce from this country to the mainland coasts and islands situated

under the Charter, but have also and especially made it their aim to further colonization and agriculture in the aforesaid countries, and yet without such success, results, and fruits as they had indeed hoped :

Therefore, they, having by careful observation and long experience found that not only the islands lying within their province, but also the mainland coasts, and especially the Wild Coast extending from the River Amazon to..... degrees northwards, are of such situation and soil that everything can be cultivated, sown, planted, and raised there that can be cultivated and raised in the famous regions of Brazil, yet that, for the further increase of population and agriculture, there are required not only persons of reasonable means, industry, and experience, but also all others of lesser condition and ability, would, with the knowledge and approval of their High Mightinesses the States-General of the United Netherlands and the General Chartered West India Company, agree, and do hereby agree, to offer and to submit the following Articles for the encouragement of one and all : —

Firstly, that under the sovereignty of the States General and the authority of the Chartered West India Company every one shall be it liberty to go from this country in his own, in hired, or in the Company's ships to the aforesaid Wild Coast, in order to choose there and take into possession such stretches of land as they shall have need of for their purpose and cultivation, to administer, populate, till, and plant the same on condition that they provide themselves with proper shoulder and side-arms, with their appurtenances. "

I had only intended to read the first. However the next few lines are important :

" Secondly when by God's help the population on the aforesaid Wild Coast shall have grown to 200 families or more, the colonists themselves shall provisionally and with the approval of the Zeeland Chamber elect three, five or seven Councillors from their own number. "

This is an important statement. It is a statement that is made in the year 1656 by the West India Company. It is a statement which has reference not to Essequibo alone or to the Pomeroon and Moruca, which was as yet uninhabited but specifically relates to the whole Wild Coast from the Amazon to a degree that is not mentioned but it is known at that time what was meant by the Wild Coast. It was between the Amazon and the Orinoco and there must have been there then considerably less than 200 families, because the statement is made that,

" When by God's help the population on the aforesaid Wild

Coast shall have grown to 200 families or more the colonists themselves shall provisionally, ”

and so on. It is important as showing the condition of things at that time eight years after the Treaty of Münster.

Nothing seems to have come of these offers to colonists and in 1657 there were some other liberties and exemptions offered which appear at page 142.

Lord Russell. — It is not important perhaps, but one may observe in passing, at B, on page 139, the Eighth Regulation :

“ In order that everything may proceed with complete knowledge, all prospective planters going from here thither, whether in their own ships, or, where there is opportunity, in a ship of the Company, shall be required to ask for passports from the Zeeland Chamber; or if they journey thither from the islands, they shall, upon arriving there, give their names to the Com-mandeur of Essequibo or his deputy. ”

The Essequibo, therefore, had been existing for some time.

Mr Mallet-Prevost. — Yes; this was in 1656. The Essequibo had been existing in some shape since 1626.

Lord Justice Collins. — I am not sure with regard to the estimation of the population that they are not limiting it to the expected population on the Wild Coast as distinguished from existing settlements. Between E and F on page 137 :

“ Therefore, they, having by careful observation and long experience found that not only the islands lying within their province — ”

that is one thing —

“ but also the mainland coasts, and especially the Wild Coast. ”

Then they go on to deal with reference to the Wild Coast and they estimate the population on the Wild Coast.

Mr Mallet-Prevost. — Yes, as distinguished from the islands.

Lord Justice Collins. As from the province;

“ lying within their province ”,

you see

“ not only the islands lying within their province but also the mainland coast and especially the Wild Coast. ”

Mr Mallet-Prevost. — It is the islands with the province.

Lord Justice Collins. — The province is one thing and the islands are another.

Mr Mallet-Prevost. — It seems to me, my Lord, that that is rather a strained interpretation to give to these words. The islands are clearly

distinguished from the Wild Coast but Essequibo River is constantly referred to as part of the Will Coast. We find extracts in which the Corentin is said to be on the Wild Coast, Berbice is said to be on the Wild Coast and Essequibo is said to be on the Wild Coast, and when the Wild Coast is mentioned I should think it a strained definition to say it did not include those various Dutch establishments when they had been specifically and repeatedly referred to as being establishments on the Wild Coast.

Mr Justice Brewer. — 141 speaks of “ the Wild Coast of Essequibo.”

Mr Mallet-Prevost. — Yes, and I shall not take up the time of the Tribunal by citing instances though I can cite twenty or thirty where the same thing happens.

Chief Justice Fuller. — Take the preamble on page 137 :

“ Whereas the Directors of the Zeeland Chamber of the Chartered West India Company have now for many years past endeavoured by all conceivable means and ways, both by the resources of the Chamber itself, as well as by contracting with private persons, to increase, not only its trade and commerce from this country to the mainland coasts and islands situated under the Charter — ”

those are the main lands, coasts and islands — but perhaps this takes up time.

Mr Mallet-Prevost. — I should be very glad to point out the passages which give a definition of the Wild Coast.

Lord Justice Collins. — No doubt the Essequibo lay within the area of the Wild Coast.

Mr Mallet-Prevost. — And not only lay within the area of it but was spoken of as being in it.

Lord Russell. — It is sometimes spoken of as being the Wild Coast itself. They speak at page 141 of the “ Wild Coast of Essequibo.”

Mr Mallet-Prevost. — Certainly, my Lord. There are a large number of definitions but no definition, as I pointed out the other day, in all the evidence, where the term “ Wild Coast ” is limited to the region lying between the Essequibo and Orinoco.

Mr Justice Brewer. — On page 145 between A and B ;

“ Firstly, that there shall be equipped two ships, the one to the Wild Coast, otherwise Essequibo. ”

Mr Mallet-Prevost. — In view of these statements I shall not ask the Tribunal to read any of these definitions but I will read a few of them myself and give the references.

Mr Justice Brewer. — Suppose you give us a list of them.

Sir Richard Webster. — I have stated that it was used indifferently; and it certainly in some referred to the Essequibo.

Mr Mallet-Prevost. — I say it is never referred to as applicable

exclusively to the region between the Essequibo and the Orinoco. That is the contention of Great Britain.

Sir Richard Webster. — Look at page 145.

Mr Mallet-Prevost. — That is no warrant for saying it refers to the coast between Essequibo and Orinoco and that is the distinct statement of the British Case. At page 25 of the British Case this statement is made:

“ In 1628 assistants were engaged “ to lie on the Wild Coast ”, — a name by which the coast between the Essequibo and Orinoco had become well known. ”

In the first volume of the British Case Appendix there is a foot-note by the editor stating that the Wild Coast is the coast between the Orinoco and the Essequibo. Without reading them I will give the Tribunal a list of a few of these definitions.

The first is in the British Case Appendix volume I, page 63, where the Berbice is spoken of, the second page 64, the next page 67, same volume, where it is said “ the whole Wild Coast from the Amazon to the Orinoco inclusive and all the islands adjacent thereto. ”

Lord Russell. — And another at page 146,

“ to establish and plant Colonies on the Wild mainland Coast between 1 and 10 degrees, ”

and I make it out that 1 and 10 degrees would not include the Amazon.

Mr Mallet-Prevost. — I think it would in the conception of the time — it was roughly speaking.

Lord Russell. — If it is taken literally I think you are right; probably it is not; it would run from somewhere about the Essequibo up to the Gulf of Paria.

Mr Mallet-Prevost. — One is the equator.

Lord Russell. — I was speaking of the numerals of this map.

Mr Mallet-Prevost. — Yes; Essequibo is at 7 degrees above the equator.

Lord Russell. — Yes, I was taking the wrong numerals.

Mr Mallet-Prevost. — You will see by reference to any map (taking N° 9 of the British Atlas which I happen to open) the equator passes the mouth of the Amazon. That is the 1, and the 10 is, in this case, Trinidad and while it cannot be absolutely accurate that was the general conception of the Wild Coast.

Lord Russell. — Yes, I think there were varying meanings attributed to this phrase.

Mr Mallet-Prevost. — Yes, but never in a single instance as I have stated over and over again is it spoken of as it is alleged to be spoken of in the British Case as limited to the territory or coast between Essequibo and the Orinoco.

Lord Russell. — Apparently; so far, I do not see any proof of that.

Mr Mallet-Prevost. — I refer the Tribunal to the First British Case Appendix page 112; the same, page 127; the same, page 141; the same, page 146; the same, page 148; and to the third volume, Appendix to the British Case, pages 146 and 147.

The conditions offered in October 1656, an extract from which I have read, resulted in nothing; and in June 1657 other liberties and exemptions were offered to colonists. I will not read them, but give the reference; First Appendix British Case, pages 142 and 144. The result of these liberties and exemptions was a contract made in December 1657 for the establishment of a colony, that contract being with the cities of Middelburg, Flushing and Vere. In that connection I will read from the First Appendix, British Case, page 145, the bottom of the page. There is the contract :

“ The West India Company shall approve and, so far as in it lies, make effective this agreement, basis, and Ordinance, whereby the aforesaid cities, together with Commissioners appointed by the aforesaid Directors, are to establish and plant Colonies on the Wild mainland Coast between 1 and 10 degrees, and that in conformity with the liberties and exemptions already granted, or yet to be granted, by the Assembly of Nineteen. ”

This is the extract to which the Lord Chief Justice referred as a definition of the Wild Coast but it is the contract made by the Company for the establishment of colonies, not in the Essequibo or Amacura or Pomeroon, but somewhere on the Wild Coast. It was in consequence of this contract that an engineer of the name of Cornelis Goliat was sent out to this Wild Coast to make a survey. He went there and made his survey. I think the record of it is page 146 C, but I will not stop to read, and in August 1658 we have the first letter from Pomeroon. Goliat, when he went to the Wild Coast, surveyed that region and a settlement was actually begun. That letter begins at the bottom of page 146. It is not the letter itself, but the record of it, in the records of the governing committee, of the three cities.

“ There was read a letter from Aerts Adriaensen and Cornelis Goliat, dated from Nova Zeelandia — ”

that was the name of the colony established in the Pomeroon at that time —

“ on the 18 June, 1658, which is now provisionally placed with the other documents until the next meeting.

There was read a short description by Cornelis Goliat of the Rivers Demerara, Essequibo, Pomeroon, and Moruca, situated on the coast of Guiana, otherwise called the Wild Coast, and now Nova Zeelandia, which it was resolved to have copied and transmitted to each member of the Committee. ”

The colony which was started at the time seems to have flourished for a short time. Then I want to call attention to one or two letters

written by the Commandeur showing what its general condition was and what its relations were to the Spaniards on the west. I shall read from the Appendix to the British Counter Case page 33, the middle of the page. This is dated at New Middelburgh which is another name for this colony called Nova Zeelandia. I think New Middelburgh was intended to be its capital.

“ At the present everything is in very good condition. Everything is progressing favourably; provisions are in abundance; the grounds not only promise but yield richly; there is also very much fish here, and meat as well, but meat and fish have mostly to be obtained through trading wares. The country is at present full of sugar cane, so that we have very great need of sugar boilers. Negroes are required here. Cattle are received daily from Orinoco. ”

I call attention to that fact. In the consideration of this period the Orinoco has been constantly belittled. Here is a fact that speaks for itself, that as early as 1661 this colony was receiving cattle from the Orinoco.

Lord Russell. — It may have been they were bringing it.

Mr Mallet-Prevost. — Bringing it or receiving it, I point to the fact that the Orinoco was in such condition that it was possible for it to daily supply cattle for this Dutch colony on the Pomeroon.

In this same volume of the Appendix to the British Counter Case, at page 36, in a further extract opposite D :

“ I do not know whether I should be able to rely implicitly upon the above-mentioned Pieter Lefeber in an emergency. Your honours will be pleased to consider what kind of people they are here, which is a lamentable and deplorable pity, for the country in itself yields good sugar cane and this again would give a large quantity of sugar annually if only a dozen good, honest men would come over with a small capital.

Your honours will be pleased to provide me with soldiers, and to send fifty at the earliest opportunity, since I am compelled to establish a battery at the fort point in order to free the river of foreign nations. The Commandeur Bergenaer has sent me a communication, copy of which is enclosed, from which your honours will please see what the English have commenced to do. ”

On page 37 below C, we have a demonstration of the condition of things at that time :

“ Through such troubles as these the soldiers have often to be sent out to keep the country in peace so that I am frequently left without any men, and those who remain behind at the fort

are ill and weak, one of whom (named Pieter Cryger) has been drowned . Again, when the small battery at the fort point is completed, there must be at least ten there and ten soldiers more at the house Nassau, in Moruka, in order to protect those places against any attack, and here there must be thirty, for occasions arise daily when some have to be sent out, and at least the chief places must be defended. Unless therefore your honours send some more soldiers I cannot live in security, although I let no one know this, and if it continued so any longer the last trouble might perhaps be worse than the first, which God forbid."

I do not read this for, in any way, belittling the Dutch effort at that time; but I do read for the purpose of rebutting the impression that is attempted to be made that this was a great flourishing colony and spreading in every direction and had no need of protection; and that the Spaniards were fleeing from it in every direction and that it needed further territory for expansion and development. At the foot of page 37 :

" According to your honours' orders — "

Lord Russell. — Just above that is a statement about the taxes they propose — the tobacco they are growing, the sugar they are manufacturing and likely to ship.

Mr Mallet-Prevost. — Yes, those passages were read by the Attorney General. I have just said it is no part of my contention to belittle what was being done there. It was a genuine effort to establish a colony, but the effort, as I shall show, very soon came to an end. At the bottom of page 37, I think that was read by the Attorney General and it is not necessary for me to repeat it. It refers to the visit that the Commandeur made at that time to Orinoco.

Lord Russell. — The visit of the Governor of Guiana.

Mr Mallet-Prevost. — Yes.

Lord Russell. — That was relied upon in another connection as showing that, when the Governor of Guiana knew this colony was established where it was, he made no objection.

Mr Mallet-Prevost. — Yes; it was relied upon in that contention and in another, also, namely that the fact that this Pomeroon Governor passed by Barima, and thought it would be a good place to establish a settlement, or take up lands, that that is to be regarded as evidence of some sort of Dutch rights in Barima and possibly some sort of control — that was seriously put forward by the Attorney General. There is another point not to be overlooked in connection with this extract, that is to say, that the trade which he went to effect with the Governor of Guiana was a trade of very large proportions, involving,

" 50,000 pieces of eight, five or six thousand arrobas of good Varinas tobacco at eighty-four and eighty-eight stuyvers per arroba, and some thousand hides at sixteen stuyvers. "

It shows the extent of cattle raising that there must have been at that time in Guiana and of tobacco.

Chief Justice Fuller. —

“ After I had been there some days and had killed twenty-three animals, I negotiated with him for a vessel of at least four or five hundred negroes and some goods, the payment for which was — ”

Lord Russell. — Was that with the Spanish?

Chief Justice Fuller. — Yes, the Spanish Governor.

Mr Mallet-Prevost. — Yes, it was a transaction made there.

Sir Richard Webster. — It was a sale to him. It was to be.

Mr Mallet-Prevost. — I mention it in passing as evidence of the transaction. The Attorney General referred to it as a Dutch transaction but not a Spanish transaction.

Sir Richard Webster. — No. I beg your pardon.

(Ajourned for a short time).

The President. — Mr Mallet-Prevost, will you continue your argument?

Mr Mallet-Prevost. — The colony about which I have been speaking, Mr President, and to the history of which I have referred briefly, came to an end in the year 1666. The account of its destruction will be found in the first volume of the Appendix to the British Case at page 167. This is an account taken from the Journal of Governor Byam. The colony was attacked by the English, under Major John Scott, at that time and was entirely destroyed. I read from page 167, opposite C :

“ In November here arrived from his Exllce., his Serjt. Majr. Jno. Scott after his victory at Tobago with a small Fleet and a regimt. of Foote undr. the Carrectr. of Majr. Genll. of Guiana, Cheife Commissionr. and Commandr. in Cheife by Land and Sea in few months his great Fortune and gallantry prudent and Industrious Conduct made him master of all the great province new Zealand and Desseceub settled a peace wth. the Arrowayes left both Collonys in a Flourishing Condition and well garrison'd for the King of England New Zealand undr. the Conduct of one Captaine Boxlson and Dessecube undr. the Comand of one Capt. Kenn, both old Soldiers and sober Gent.

About two months after his arrivall at Barbados the Indians understanding he was not to returne withdrew all Commerce wth. the English in the Forts. Many the Dutch French and Jews were soone upon ye. Wing to the French Islands Marti-nico and St. Christophers etc. and those that remained grew discontent. I could be more particular but that I have writt lately of this Gent's voyage to his Excellcy. which I hope will

not be lost. In August following one Cope was sent with supplies for the Reliefe of those Colonys and one joncker Hendyck or Switts to still the Indians that greatly distressed our Collonys wh. run Restrograds and onely for want of supplies (notwithstanding I did my endeavour) after many brave defences were forced to submit themselves many to the merciless French and in April following the whole Colony to the Dutch. The loss of such a Jewell cannot sufficiently be lamented.

For the prevention of the suspected danger I ordered about 70 men against the french under the conduct of Capt. Wm. Cowell and about 80 more Leeward agst. ye. Dutch and Arwacas and to relieve our dear countrymen Descacebe and Bawrooonsa — ”

no doubt those are meant for Essequibo and Pomeroon —

“ who we feared were in Distress — under the command of Capt. Christopher Rendar. Nor was Capt. Rendar unsuccessful at leeward, having stormed two warehouses of the Arwacas and had other bickerings wth. them wherein he slew about 30 men and took 70 captives. But for the releife of or. men at Dissekebe he came too late, who about 3 weeks before through want of ammunicion and iresistable hungar were forced to surrender themselves and 12 hundred slaves wch. they had taken to Burgunas a Dutch Gener who beseiged them, But on good articles, wth. those Complaine hee afterwards brake, And as for or. poore men at Bawrooma they were also for want of timely supplies destroyed by the French who most inhumanly (after they were starved out of the fort []) delivered them to the cruelty of the Arwacas at the mouth of that River to be massacred. This was informed me by one of that fort who was absent when it was taken, who learned it from the Indians : But since I understood the maine fort was not taken untill the coming of the Fleet from Zeeland, 1667. ”

And there is also an account which I will not stop to read now, but which I refer the Tribunal to, in this same volume at page 100 at letter C, and on page 191, letters D and F and also at page 192, letter C. They are very brief extracts, and possibly I had better read them. The one on page 190, at C, is this :

“ That the administration of Nova Zeelandia was established in the year 1657. ”

And then on page 191, opposite D :

“ That on the 9th September, 1658, the cities began to consider about making the aforesaid Colony provincial; and

that on the 3rd October, 1658, Deputies were appointed to broach the matter to the respective members of the estates of the province. That the invested capital was increased or augmented to the sum of £ 12,000 Flemish.

This is a very brief account of the whole history of the colony told in a nutshell. Then :

“ That on the 15th April, 1659, the deputed Councillors wrote to the aforesaid Directors, sending them an extract from their Minutes of the 11th of the same month, requesting them to give the provincial estates their opinion on it, and especially to make a statement of the sums which would be required for the maintenance and continuation of the aforesaid Colony. That the members for Vere — ”

that was one of the three cities : I am reading now opposite the letter F —

“ as early as 1660 failed to furnish their quota, and that in view thereof on the 16th December of the aforesaid year a discussion was begun as to the measures that should be taken in order to constrain them thereto. ”

And then at page 192 under 15 :

“ That the River of Essequibo, being in the year 1665 captured by the English, and these being driven out again in the same year, under the leadership of Matthys Bergenaar, Commandeur of Berbice, with some troops drawn from the garrison there and joined to the Company's negroes and other servants who had retired from the aforesaid river into the woods, the soldiery of this State at last stationed itself there and continued to occupy the aforesaid River of Essequibo until the year 1670, when the river was again given over into the hands of the West India Company in its Chamber here, as appears more fully in the conditions made therefor on the 11th April, 1670. ”

So that this colony, which began in the year 1658, lasted until the year 1666, came then totally to an end by reason of the English attack, and, from 1666 until 1686, that is for a period of 20 years (I may say that, with the exception of some few references to this region), there is nothing whatever regarding it. The colony came completely to an end and there was no Dutch occupation of it. In 1670, there was a proposition for a new colony, which is to be found on page 171, at the bottom of the page, at F. This was four years after the old colony had expired or had been destroyed.

“ There were certain public-spirited persons who offered their services in order, together with this Chamber, to erect a new Colony upon the whole Wild Coast. ”

“ [The conditions agreed on for the above-mentioned Colony having been reported, it was voted] to accept and approve the same, after certain slight corrections — especially on this condition, that from the first Article shall be struck out “ Pomeroon ” since the disposal thereof does not belong to this Chamber, but to the Committee of Nova Zeelandia. ”

Four years had passed ; nothing had been done ; and when a new proposition was put forward to do something, then the question as to who had the right to dispose of the Pomeroon was for the first time brought up.

There is a similar reference on the same page in the document that follows :

“ There was read to the Assembly the Petition from the Directors of the Chartered West India Company of this country, showing that the Chamber of Zeeland having some time ago commenced to form a colony in the River Essequibo upon the Wild Coast of America. ”

Lord Russell. — What is the date of that ?

Mr Mallet-Prevost. — 1670, my Lord.

Lord Russell. — Yes, the document is written in 1670.

Mr Mallet-Prevost. — Yes.

Lord Russell. — But what is the date of the fact there referred to, “ subsequently? ”

Mr Mallet-Prevost. — 1666. It is referring to the colony.

Sir Richard Webster. — It is the next sentence.

Chief Justice Fuller. — “ The same had fallen into the hands of the English during the English War. ”

Mr Mallet-Prevost. — That happened within the year. I did not entirely catch your Lordship’s question : having that in mind, I will just re-read the few lines, my Lord.

Lord Russell. — Yes.

Mr Mallet-Prevost. —

“ There was read to the Assembly the Petition from the Directors of the Chartered West India Company of this country, showing that the Chamber of Zeeland having some time ago commenced to form a Colony in the River Essequibo upon the Wild Coast of America, the same had fallen into the hands of the English during the English war — ”

that was in the year 1666 —

“ but that with the forces sent out by the Province of Zeeland, amongst others, to the coasts of America, the aforesaid Colony had again been got out of the hands of the English, and that subsequently the aforesaid province of Zeeland had allowed itself to be persuaded by the Company to again place the aforesaid

Colony in the hands of the Company, and to give it up to the latter on the 11th April of this year — ”

I think that was within about a year after the attack.

Mr Justice Brewer. — Does that refer to the 11th of April of the year 1670? It says “ on the 11th April of this year ”; that is 1670, is not it?

Mr Mallet-Prevost. — Your Honour is right; it had during that time remained in abeyance.

“ upon the conditions agreed to with the Chamber of Zeeland, and as exhibited together with the aforesaid Petition, and provided that the agreement made should, on being submitted to the Assembly of Nineteen by the Chamber of Zeeland, be found to be in conformity with the interests of the Company, wherefore the aforesaid Directors begged that their High Mightinesses might be pleased to approve of the said agreement, so that the Company might again come into possession of the aforesaid Colony. This being deliberated upon, it was approved and agreed to hereby consent to the aforesaid request, and the aforesaid agreement was consequently approved, which act of approval shall be made out in due form. ”

So that this region of the Essequibo and Pomeroon came back to the hands of the Company four years later, in the year 1670. There is a mere reference there to the Moruca in a passage which I will refer to later on in another connection.

Lord Russell. — As to the coming back into possession, do you include the Pomeroon in that coming back into possession or Nova Zeelandia?

Mr Mallet-Prevost. — Yes; whatever there was left there. The place had been practically abandoned by this time and continued abandoned until the year 1686; but in the year 1686, when the new Colony was —

Lord Russell. — No, I am asking about the date of 1670 which you have been reading about. It says possession came back.

Mr Mallet-Prevost. — Yes, it says possession came back.

Lord Russell. — Does that cover possession of whatever had been the situs of the old colony or what had been the old colony?

Mr Mallet-Prevost. — Yes, I think so undoubtedly.

Lord Russell. — Very well.

Mr Mallet-Prevost. — There is a similar reference in the year 1672 to the Moruca which extract I shall read in another connection later on. It is an extract which was referred to by the Attorney General, where certain property belonging to some one in Berbice had been taken at Moruca, and an agreement was made in that year between the authorities of Berbice and the authorities of Essequibo not to intrude upon each other's territories. But I shall refer to that later on in another connection.

There is a third reference during this intermediate period to this Pomeroon region, and that is in the new Charter of 1674, which, as has before been pointed out, limited the territorial rights of the Company to the places of Essequibo and Pomeroon.

There is a fourth reference to it on page 179 of this same volume, at the bottom of the page.

Lord Russell. — It is a description of the Dutch settlements?

Mr Mallet-Prevost. — Yes; my Lord.

“ Description of the Dutch settlements on the Islands and their possessions on the mainland between the Island of Carpoy and the River Poymaron. ”

And at page 180, opposite D., there is this :

“ Twenty leagues to leeward on the River Paumaron is the settlement of New Zalandia, which is of considerable size and rich in produce, and the best trading establishment which they have on the whole coast : consequently they guard it very carefully, for it is very near the River Orinoco, where your Majesty's garrison of Guayana is placed. ”

This document which is anonymous and which is not dated, has been here attributed to the year 1776.

Lord Russell. — One is struck with the little knowledge which they appear to possess. It is a long way off.

Mr Mallet-Prevost. — If this date be a correct date, it does show a lack of knowledge about the Pomeroon and the Moruca at that time, whoever wrote the paper; and it clearly refers to the former colony which had come to an end : but there is a phrase here which is important and to which I call attention, and it is a phrase which explains a great many others that we shall later come across. It refers to this Colony of Pomeroon. It refers to that region as something which is very near the River Orinoco, and in this connection I shall have to point out more than once that when in Spanish documents this expression is used, “ the River Orinoco and the nearness of the Dutch to it, ” it is evidently used with the intention of having it cover not merely the main stream of the Orinoco, but the entire region there to the south and to the east of the main stream of the Orinoco. The Dutch are spoken of as at Pomeroon and yet as very near the Orinoco.

Lord Russell. — Is not the simple explanation of that this, that they did not know very much about the district ?

Mr Mallet-Prevost. — I do not think, my Lord, that that is a sufficient explanation. They may not have known a great deal about it, but they knew something about distances, as will appear from many other extracts, and yet they regarded any settlement that was at the Moruca or the Pomeroon as something which was very near to the Orinoco.

Then at page 181, opposite F, there is a reference once more to the Pomeroon. This is by the Commandeur of Essequibo :

“ The River Pomeroon also promises some profit ; for, in order to make trial of it, I sent thither in August last one of my soldiers to barter for annato dye. ”

This shows how completely the Pomeroon had been abandoned at that time, — that in the year 1679, the Commandeur at Essequibo was able to speak of it in this way, that he sent one of his soldiers to make a trial of it in this way. It goes on thus :

“ But there lately came tidings of the approach of a strong fleet of Caribs from the Corentyn with intent to visit this river and Pomeroon, having perhaps a secret understanding with the Caribs dwelling here to make a common attack upon us. ”

showing that the Caribs were not always very friendly to the Dutch. Then :

“ This danger, thank Providence, we have escaped ; for I now learn from Berbice that they long ago passed this river on their way from Barima — ”

thus identifying these Caribs with Caribs from Barima —

“ and seizing in Berbice an Indian boat, have gone back to their homes again ”,

and so on. Another reference to the Pomeroon will be found at page 186, opposite B :

“ Pomeroon begins annually to deliver much and good annatto and much was supplied from Barima, as appears from the inclosed list under No. 7. ”

I shall have later on to refer to this passage, and therefore I do not refer to it any further now, until I come to speak with regard to Barima.

I come now to the years 1686 to 1689, when there was an effort made to establish another Dutch colony on the Pomeroon, the last one that was established, a colony that was destroyed in the year 1689 by the Caribs and the French. At page 189, opposite letter C, we have this account. This is from the proceedings of the West India Company :

“ There was read a letter from the Committee of Directors from the respective Chambers of the General Chartered West India Company, dated the 24th of last month, concerning the establishing of a new Colony in the River Pomeroon and the appointing of a Commandeur over the same ; ”

and then comes the following :

“ The Minutes were submitted and approved, with the excep-

tion of the Resolutions passed concerning the appointment of a Commandeur and further control for the River Pomeroon, it being taken into consideration that the cities of Middelburg, Flushing, and Vere had, as early as 1657, made a contract with the Company in regard to the settling of the aforesaid river, and thereafter had actually established there a Colony called Nova Zeelandia, for which and other reasons the Burgomasters of this city had requested that the Resolution upon this subject passed last Thursday by this body be not carried into effect, at least not until such time as, this matter having been more fully examined, it should be found that the Company was entitled to assume the aforesaid control. Whereupon, the matter having been put to the vote, it was resolved not to approve the aforesaid Resolution, much less to carry it into effect, until a conference had been held with their Honours, and in the meanwhile Messrs. Van der Merct and Biscop were, together with the Advocate, requested and deputed to examine the Minutes kept by the Directors of Nova Zeelandia, and also the contracts made upon this head by the aforesaid cities with the Company, and to the respective Chambers the necessary communication was to be given of this Resolution, with the request that they appoint Delegates to confer upon this matter with the aforesaid cities, and to adjust this affair with their Honours, or else to authorise this Chamber to do so."

Lord Russell. — That is recognising, in fact, some prior claim to the neighborhood of the Pomeroon in some other people.

Mr Mallet-Prevost. — In these very cities of Middelburg, Flushing and Vere, by reason of the other contract; there was a desire to clear that matter up, before a new Colony should there be undertaken.

Lord Russell. — Yes.

Mr Mallet-Prevost. — De Jonge was appointed Commandeur of this new Colony, as appears on page 193, opposite letter B; this was on the 5th of April, 1686.

" Concerning the populating and cultivating of the River Pomeroon lying near the River Essequibo on the coast of America, that their Honours have provisionally decided to appoint a Commandeur for the aforesaid river in the person of Jacob Pietersz de Jonghe... but that previously the gentlemen of Middelburg and other towns, as owning an interest in the river aforesaid... formerly named Nova Zeelandia, had on this account opposed [the Resolutions], yet subsequently declared themselves content to allow them to pass. "

De Jonge appears to have departed for the Colony very shortly after that, and we have at page 199 an account of the condition of things as

they were at Pomeroon immediately after his arrival. I shall read a few extracts from this account beginning at D on page 199. This is dated in the River Essequibo, May 1686.

“ To give your Honours news of our journey, we have progressed as well with it as could possibly be. On the 31st January we started from before Flushing, and henceforward Y. H. will be pleased to see it as per accompanying day register. To give Y. H. news of our arrival in River Essequibo, it took place on the 4th April, as Y. H. will also be able to see by the accompanying day register. As soon as I arrived in the aforementioned river I addressed myself to the Commandeur Beekman — ”

he was the Commandeur of the Essequibo —

“ whom I showed my letters from the Noble Chambers, so as to be able to make my voyage to Pomeroon as speedily as possible. I therefore requested the aforementioned Commandeur to cause me to be convoyed in the boat to the river aforesaid, with my necessary provisions, for the purpose of surveying, that I might find the most suitable spots for being able to place the fort and the plantations. Then Commandeur Beekman told me that he had orders from the Noble Lords to assist the skipper, Machiel Dircksen, but that I could easily make a journey to and fro to Pomeroon in the boat, in order partly to survey it. As he had no immediate need of the boat aforesaid, my intention was to give Y. H. information as to the condition of the River Pomeroon, but through lack of time I have but caused the river to be laid with buoys. I should willingly have gone there alone, but was compelled to take all my people with me, because the Commandeur Beckman said that he was not well furnished with provisions, so that I have only left my assistant by himself at the fort; ”

showing not a very prosperous condition of the Essequibo colony at that time. And then below that, opposite to letter C, there is this :

“ I have no doubt but that the river will shortly become inhabited. Had there been but some more room on the ship, 'De Vrijheijt', I feel certain that several planters for the River Pomeroon would have accompanied me ”.

And lower down, under D, there is this :

“ The goods sent for, which I, as per accompanying Memorandum, have sent for, is simply wherewith to obtain some red slaves, oriane dye and vessels, and provisions, and whatever turns up. But if Y. H. be pleased to send further wares in order to make a journey as occasion offers to Orinoco, for

which Y. H. will be pleased to send, also other wares, in order to traffic among the Spaniards there — ”

And when I come to treat of the question of trade, I shall point out that, with the exception of a few specific instances, the trade was a trade between the Dutch at Essequibo or Pomeroon, as the case might be, and the Spaniards in the Orinoco. That was the great bulk of the trade. It was a trade with the Spaniards in their own possessions, and not a trade, as has been pretended, in this disputed territory along the Barima and at other places with the natives themselves. Then :

“ Your Honours will likewise be pleased to send some slippers and shoes and white shirts, as well as hats and white fustian, in order to sell them at a good profit to the soldiers and other folk; also, Y. H. will be pleased to send me five or six red coats and breeches, with some sham gold and silver lace, to keep on friendly terms with the Chiefs of the Indians. ”

And then at the top of the opposite page, page 201 :

“ Will Your Honours be pleased to give orders that the Commandeur Beekman supply me with some cows to rear, as in these parts they are 40 gulden. I hope Y. H. will shortly supply me with slaves, since I hear that many intend to go with me here from Essequibo and also from Berbice into the River Pomeroon; the Commandeur Beekman has promised that he will render me assistance with a boat and young plants; the Commandeur Beekman has also supplied me with two old negro slaves, by name, Lucas and Renier, and various others besides, as Y. H. will be able to see from the inclosed Memorandum. As regards the plantations, we shall, in the first instance, plant against the arrival of the slaves cassave, potatoes, beans, maize, yams, and everything. The Postholders placed in Pomeroon to barter dye I had determined to keep, but the Commandeur Beekman said that he had need of his people, so the Commandeur summoned them and made them stay here at the fort. ”

It was a beginning but a very small beginning of what lasted for a very short time in the Pomeroon.

There is a further account from de Jonge in a report in the following year, 1687, at page 203 of this same volume, opposite B :

“ With regard to advising Y. H. whether planters are coming here or purpose to come, that is so, yet no one dares to be so bold as to come here before he has seen the conditions of Y. H., because they are sensitive about the affair of Ferdinand van Overschiltten. I know well, however, that some planters would

have been here, whose destination was this river, but as soon as they arrive in Essequibo this river is so despised that they remain there. However, I am certain that whenever Y. H. be pleased to send the conditions to the islands, as, by name, Bardades, St. Tomie, Curaçoa, Antiges, and Seratte and surrounding places, the planters will quickly come here, so as in due course to found a good Colony on this river. ”

So that apparently, after a year's effort, as yet not very great progress had been made. And we find at the bottom of page 204, under E, this :

“ I would beg Y. H. to be pleased to direct Commandeur Beekman to supply me with some cows, since he has full fifty head, great and small, and also here is pasture enough to pasture some cows, and they should breed well, too, since here near at hand capital cattle thrive. Will Y. H. be pleased to be so kind as to send me a cask of good beer, and to place one cask of wine at least on the list. I am much put about for small articles of exchange, as knives and beads, and though the Commandeur Beekman has supplied me with a small quantity, I shall look for some per next despatch. ”

Evidently, de Jonge was neither at the head of a very flourishing colony, nor was he at the head of a very extensive trading establishment.

In the following year, 1688, at page 206, we have this further statement of De Jonge, opposite letter E :

“ I have also sent for three or four soldiers from the Heer van Sommersdijck, though not knowing whether the same will come. As I had become very weak in guards through the decease of two soldiers, I have asked for these same in order to strengthen my guard, and remain after commending Y. H. to the protection of the All-High God ”.

It is a comment upon the strength of this great garrison that the death of two soldiers very greatly affected it !

The destruction of this colony was in the year 1689 (in the following year that is) after which date, apparently, with the exception of being as I say a place where a trading Post was kept up at times, was entirely abandoned. There is an account of the destruction of the colony in the second volume of the Appendix to the Venezuelan Case at page 59. This is an account by Abraham Beekman, who was at that time the Commandeur in Essequibo. I read from near the bottom of the page : —

“ This undoubtedly, according to all indications, will happen — ”

The Commandeur has been speaking of the presence of War Ships. I will read a little further back, in order to make the connection perfect-

ly clear. In my endeavor to abbreviate, I find I do not make myself very clear, Mr President. I shall read the whole of this :

“ Sirs, these few respectful lines serve only to inform you that the ship *den jongen Indiaen*, skipper Gerrit Schonck, having left on the 13th of December last with my letters to you without any return freight, since he had no instructions therefor, and having got down to near the mouth of this river, met there the fishing boat, skipper Steven de Waterman, coming from Orinoco, who told skipper G. Schonck that on the sea, a little below this river, he had met and boarded a large barque, whose skipper had informed him that he had come in seven weeks from Texel, and, intending to go to Surinam, had fallen off too far to leeward, and that shortly before his departure from Texel war had been proclaimed between France and our country, and that our fleet, 100 ships of war strong, was at sea, since there was fear of a rupture with England. This caused skipper Gerrit Schonck to resolve to touch at the coast of Biscay ”.

Now lower down, there is this :

This undoubtedly, according to all indications, will happen, as the French are daily sojourning in Barima with the Caribs, often with two or three barques, and the English from the islands may do likewise. And, for a proper occupation of so many posts and the fort, we lack the men, our force, consisting of a sergeant and 18 soldiers and three or four workmen, with a Surgeon, the skipper of the barque and six men on the two plantations. ”

Let me point out to the Tribunal that this is the statement of the Commandeur of Essequibo as to the forces that he had in the colony at that time, — 18 men.

“ Considering, then, that in Pomeroon the company has nothing to lose but a small bread and yam garden ” —

this will show extent of the Colony there at that time —

“ with five or six decrepit negroes, the others having been sold to the free planters, and moreover two one pounders, lent by me to the Commandeur at his earnest request until he should have obtained others (I have sent him, too, at various times, the larger share of the wares, such as beads and heavy ironware, of all of which I have sent you a list by the ship), and the whole force there consists of only nine or ten men, surely a feeble garrison to resist his neighbours the French and Caribs in Barima and elsewhere (though, as these know well, that little or nothing is to be got there, probably no attack is to be feared)

— for these reasons, then, and others too long to detain you with, I thought it well, since beyond all question more is to be lost here, and, moreover, both were the Company's property and servants, to notify the Commandeur Jacob de Jonge, to consider, since nothing of consequence and no stores are there —

that is in Pomeroon —

“ while here ” —

that is Essequibo —

“ are many of importance, whether it would not be to the best interest of the Company, if he, with all his men, and everything he could bring with him, should come hither at the earliest opportunity, and join us, in order here in union with us to help protect what is of most importance, and the more vigorously to resist and in every way to beat off the foe. Upon the receipt of this message, he came in person three or four days ago, since he was not able to write, and his assistant has long been sick here with consumption; whereupon I orally set forth the matter to the Commandeur aforesaid, who said that he was also inclined thereto and considered all those arguments sufficient, but begged a delay until the boat from Surinam should come back and more particulars of the War should be obtained from home via that colony, and (added) that, if our affairs were really in such a dangerous state, he would, upon notification from me, come with all his men and material of war. And since no provisions are left in Pomeroon — ”

that shows the condition of affairs there —

“ I have, in order to supply his men and replenish our provisions, which likewise were becoming scant because the seaside produces little, requested the Manager Gideon de Bourse, to buy for us ten or twelve barrels of fresh meat, together with some refreshments of wine and brandy, and to apprise you. ”

This is the colony that had not room enough in Pomeroon to spread, and was little by little developing and piercing and penetrating into all this disputed territory.

There is another account of this, which is important, at page 210 of the first volume of the Appendix to the British Case. This is an account by de Jonge himself, the Commandeur at Pomeroon.

Lord Russell. That last date you mentioned was 1689?

Mr Mallet-Prevost. — There are two accounts of this, my Lord.

Lord Russell. — Spain and Holland were in the same boat at that time, I think.

Sir Richard Webster. — Yes.

Mr Mallet-Prevost. — In 1689, I think they were.

Lord Justice Collins. — He arranges to touch at Biscay in connection with the war.

Lord Russell. — England and Spain and Holland were then in league against France.

Mr Mallet-Prevost. — They were, my Lord. When I come to speak of the occupation of the region west of the Moruca, I shall refer to these earlier relations. At this moment, my purpose in referring to the history of this Pomeroon settlement, or colony or whatever it may be called, is simply to show what it was.

Lord Russell. — Yes.

Mr Mallet-Prevost. — And to show how it was regarded by the Dutch themselves. It was evidently regarded in the extracts which I have been reading here and in others to which I shall call the attention of the Tribunal later, as the outpost, as the limit of the colony itself, — of the Essequibo.

Lord Russell. — At any rate, whatever it was (and you have a reason for saying that it was not considerable) it was the only body or authority at that time in command of the River Pomeroon.

Mr Mallet-Prevost. — At that time, it was apparently the only one, my Lord, and I have no desire to deny that fact.

There is another account of the condition of affairs at this time by de Jonge which will be found in his report which appears on page 210 of the first volume of the Appendix to the British Case, dated July 6 1689. The other letter had been written in anticipation of the attack. This letter is written and gives an account of the attack.

Mr Justice Brewer. — One is in January, and the other is in July.

Mr Mallet-Prevost. — Yes, your Honour.

“ This letter of mine humbly serves to make Your Honours acquainted with what has happened since my last, as to how that we in the River Bourona have been suddenly attacked and overpowered by 33 French and about 300 Caribs — ”

and I call attention in passing to the fact that these very Caribs, which are claimed to have been controlled by the Dutch and through whose control Great Britain is today claiming a title to the Barima, were the Caribs that attacked the Pomeroon colony in the year 1689 and together with the French destroyed it.

“ the one party by water with ten canoes and three corials, and the other party by land out of the wood (since we had no cannon and were but six men strong) — ”

it shows the extent of the garrison! Then it goes on :

“ to wit, the last day of last April; but I effected my escape, accompanied by some red slaves. The Caribs of the French

party pursued me vigorously, so that I was compelled to hurry through the wood to escape them with my clothes all thrown off, and came at last with great distress into Essequibo to the fort, to give them warning of our miserable experiences. They had on the next day, being the 1st May, taken their departure from there, and had taken, moreover, with them everything that was there, and had used strong threats to the people that they would burn everything, unless they sought me out. Yet seeing that they were unaware in what direction I had taken flight, they left it alone, but if they had caught me they would without doubt have made me seek out the red slaves who had escaped. The reason why I was obliged to fly was that I had gone with my surgeon to a house standing some 20 paces from the fort for some business. The French had meanwhile approached from below through the sugar-canets without our knowing anything of it, and were 60 feet from me when they all stood up and rushed upon the house in which I was. When we first became aware of them they stood on the path by which I must needs return to the fort, so that I could not reach the fort, but to my vexation was obliged to betake myself to flight. A few days after this I left again for Pomeroon to inspect what was the state of things, because I thought they would certainly have murdered every one, since they had so many Caribs with them. But I found my people all still alive, and continued my sojourn with my people there, until I received a letter from the Commandeur of Essequibo, telling how the French were in the River Berbice engaged in hostilities against the other settlements; whereupon I deemed it well to hasten to Essequibo with my people, since we besides had no provisions to live upon. The bread that the Caribs had left standing there in the fields was very little, so that we in a body departed for Essequibo, since the people of Berbice had warned the people of Essequibo that they firmly believed that the French would also make an attack on Essequibo. There are still some red slaves among the Indians (who had fled before the French); all these same I shall seek to get hold of. We therefore betook ourselves over into the Company's service again in River Essequibo until further orders arrive from Y. H. I was thinking of setting out for Surinam with the Company's red slaves, and selling the same there to the Company's profit; but hearing the French with seven Royal ships of war were attacking Berbice, though finally obliged to turn away from there without effecting anything, therefore continue my sojourn here still for a time."

That was in the year 1689 and from that time till the end of the Dutch occupation as I shall show by referring to extracts at various dates

neither the Pomeroon nor Moruca were occupied except as a fort at various times may be considered to be occupied.

The President. — Take No. 118.

Mr Mallet-Prevost. — I was going to refer to that very extract. That shows what was left there at that time. This is November 15, 1689 after they received the news of this attack.

“ It was further resolved that from the Colony of Pomeroon shall be removed whatever has been brought thither on behalf of the Company, both the employés and the slaves and other chattels, there being left there only three men with a flag for the maintenance of the Company's possession at the aforesaid place, and that the aforesaid employés and chattels be transported to Essequibo, in order there to be employed for the service of the Company. ”

Lord Russell. — I do not gather the fort was taken in the assault, but that the Commandeur made his escape, because he incontinently got away from the protection of the fort.

Chief Justice Fuller. — I do not anticipate that fort there means any permanent building; it is a mere stockade.

Mr Mallet-Prevost. — Yes; and we have here in the evidence of the Company the evidence of a particular abandonment of that; no man remained there; there were only three men should remain with a flag and that was carried out in part, never more than two, and possibly one, but it was a mere post until the the province came into the possession of the British in 1814.

Lord Russell. — There was no other possession of any person or Power?

Mr Mallet-Prevost. — A series of attacks by the Spanish at the close of the 18th century. I will deal with that, but at that time Spain did not take any possession of the Pomeroon and Moruca district.

Mr Justice Brewer. — This fort was not disputed except by those occasional attacks.

Mr Mallet-Prevost. — No; except by these occasional attacks. I want to read a passage from the second Venezuelan Case which throws light on the dealings with the Dutch themselves, and I think it important to know what the Dutch intentions were when they erected any of these posts. At page 135 of the second volume of the Venezuelan Case Appendix is a letter written by the Ambassador of the States General at Madrid in the year 1759. It has already been read in connection with the expulsion of the Dutch by the Spanish in the year 1758 from the Cuyuni, from a post which they had then erected; but it is important in connection with the different subject of posts, because it explains the light in which these posts were regarded by the Dutch themselves. This is what he says :

“ Before the undersigned Ambassador can set before your Excellency the acts which form the subject of the present communication, and with respect to which he is directed by his masters to demand due satisfaction of this Crown, he must first call your Excellency's attention to the fact that his masters have been from time immemorial in undisturbed possession of the River Essequibo, and all the little rivers which flow into it, and especially of the right arm of the said river, which flows northward and is called the Cuyuni; ”

I do not dispute that point now, I will pass it over.

“ that in virtue of the said possession, his masters have for a very long time considered the whole of the said river as the domain belonging to them, and have consequently caused to be constructed, as they have in many other places in the Colony, a wooden station, to serve as an outpost, as to which the Spanish Governors have never raised any objection, or made the least complaint, understanding that such outposts are absolutely necessary to us for the maintenance of the peace of the Colony against the raids of the savages, and are constructed with no other object. ”

There we have the statement of the Plenipotentiary of the year 1759 explaining what these posts were for. When we read his words and the instructions of the States General at page 211 of the first volume in which the States General direct that three men shall be kept with a flag for the purpose of maintaining possession, it points very clearly to this, that the Dutch regarded that as their outpost, as the limit of their territory.

I shall now call attention to a number of passages covering briefly the 17th century, beginning with the year 1699, and I shall deal with entries from 1768 to 1790 which throw light upon the Pomeroon post. The first is the British Counter Case Appendix page 71, opposite D. There are isolated passages, I will not take up the attention of the Tribunal by going extensively into the matter, but these passages can be verified. They explain very fully what the posts were (there were various of them) and they will make very clear what was the purpose of keeping these posts and what the command was.

“ Early this morning there appeared here at the Fort the free planter Pieter Faull, who, after he had had some conversation with the Commandeur concerning the desertion of three Indian slaves taken away from him by the free Indians, who, it was thought, had gone with them to Pomeroon, where their dwellings were, was given a note addressed to the Postholder Frans Cantenaer, in order that the latter should, in that case, help him if they had arrived there, and with this he set out. ”

It appears at this time, 1699, some 10 years after the colony of 1689 had been destroyed that there was one Postholder, and I think only one man at the Post at that time, though possibly he may have had an assistant. At page 94 of the same volume, and referring to the following year, 1700, we have this :

“ In the afternoon a negro slave arrived here from Wacquepo in a corrial, bringing with him a few pots of wax and other trifles purchased there by Hendrick Dolskij, who had proceeded thither with some trading wares, and sent these things here. ”

The Wacquepo, which the Tribunal is already familiar with, was a little settlement on a tributary of the Pomeroon. The post in this region was at that time upon the Pomeroon itself; that is indicated as the Post before 1684. At that time it was on the Wacquepo, another time at the mouth of the Moruca, at another time at the mouth, and at another time further up; they are different sites for the same post. I do not think any of them existed for long; for a few years they may; they are different locations for one post, varying of course with the opinions of post holders. Passing to the year 1756 we have at page 180 a brief statement regarding it, the bottom of page 180, opposite F.

“ The person of Jargen Gobel van Kleijnderen is engaged in the Honourable Company's service at eight guilders per month in order to serve as assistant at the trading places Wacquepo and Moruka, because the said person understands the Indian language, and such a person is required at those posts for the service of the Honourable Company. ”

I shall have a good deal to say by and by as to the Creole Dutch. The Attorney General antedated the horse trade. Here, in the year 1753, not at a point away up in the Pariacot savannahs, but close by where the Dutch had actually had a number of colonies planted, and had a post for years, here it was necessary to appoint an assistant who understood the Indian language; the Creole Dutch therefore seems to have started in the Pariacot savannahs, rather than nearer home; about this, when I come to call the attention of the Tribunal to it, I shall have a number of pertinent observations to make.

The first as to this is the fifth paragraph and relates to the year 1726, of the second volume at page 5 at the bottom of the page.

“ In October last the Commandeur informed the Court of his intention to proceed to the Post of Wacquepo, lying between Orinoco and this river — ”

Here again I call attention to the use of this expression, this time used by the Dutch themselves, “ lying between the Orinoco and *this* river ”, the word “ Orinoco ” being there used definitely in an indefinite

sense as meaning a region which belonged to the Spaniards and which was beyond this Post :

“ at the end of the aforesaid month, and to inspect the same in company with the Councillor and Secretary; knowing that the said Post lies far out of the ordinary course of boats which come hither through the inland waters, it was his intention to choose a fit place in the River of Marocco to which he might transplant the house and Post, since all vessels which come through the inland waters must pass that way. Everything having been closely examined by the said gentlemen, they decided that the fittest place was where the horsedealers from Orinoco generally moor their boats in the River of Moruka, called in the Indian language Accouiere, it being possible to build a house there so close to the river side that a hand grenade can be thrown into the boats, the river being at its narrowest there. The unfortunate state of affairs in Europe having been taken into consideration, it was resolved to establish the house and Post of Wacquepo upon the aforementioned site as soon as possible, and thus have an opportunity of being kept well informed of the hostile boats that had any intention of coming to disturb this river, and so enable us to place ourselves in a position to resist the same. ”

Showing clearly that at this time the Dutch were looking upon the Post at Wacupo as something where they might take measures for the protection of the Essequibo colony, and a place which was regarded by them for the purpose of defence, as their frontier. At page 25, opposite B, of this same volume we have a reference to the year 1737.

“ The Post of Wacquepo and Moruka, formerly the most important trading place for the Company's annatto trade, has these last few years considerably fallen off in this business. I have taken much pains to ascertain the reason of this, and it was told me that the Postholder, Jean Baptist, was neglecting his duty; but after careful investigation I have found that, as most of the Indians who live in that neighbourhood derive more profit from the slave trade with the Surinamers, their wives grow listless about keeping up the heavy work on the dye, notwithstanding continual admonition; and though I see no way of remedying this we ought nevertheless to keep up this post, because it was established for the maintenance of your Honours, frontiers stretching toward the Orinoco. ”

There are a number of important facts brought out by this extract. One of them is that the annatto dye, of which considerable quantities were obtained by the Company was obtained from the Indians living in the neighborhood of this Wacupo or Moruca Post. I do not mean to

say that annatto dye did not come from other places, but it seems to have been rather assumed in the presentation of the case for Great Britain that any trade for any of these articles by the Indians meant necessarily a very extensive trade at points far distant, in the Barima and Cuyuni, and at different places. A very considerable portion of that dye, if not the most considerable portion, is shown to have come right from the vicinity of the Post itself. Then we have this significant statement, that the object of this Post was

“ for the maintenance of your Honours’ frontiers stretching toward the Orinoco. ”

Lord Russell. — You say on the one hand it does not point to a settlement on the bank of the Orinoco, but on the other hand does it not point to a settlement of territory beyond the point there mentioned and in the direction of the Orinoco?

Mr Mallet-Prevost. — I shall show that when this document was written, in 1737 —

Lord Russell. — I ask the sense of this passage.

Mr Mallet-Prevost. — It seems to me it can only be interpreted in the light of the claim made at that time; and when I come to deal with the claims made in the year 1737 (they were not very extensive, they grew afterwards) and the use of the word Orinoco there it seems to me is exactly the same use which has been made of it in various extracts I have read; that is to say the Dutch knew that they were in the Essequibo, and that they had this Post in the Pomeroon and Moruca, and at that time had no thought of anything else. What was beyond was Spanish, and the Orinoco, and the word used here is clear. It cannot be intended in view of the claim made in 1737 by the Dutch to be referring to the main stream of the Orinoco itself, but an indefinite term which had reference to the regions of the Orinoco that were Spanish.

The President. — Is it possible to draw the conclusion from this passage that if the Pomeroon was the Dutch frontier that the Dutch recognized what was behind Pomeroon as Spanish?

Mr Mallet-Prevost. — I do not endeavor to put it in that way. I am not endeavoring to twist out of this any Dutch recognition of Spanish sovereignty beyond, not at all. What I endeavor to point out is this : that when the Dutch used the expression in connection with the Post that they had (a Post there for the maintenance of their frontiers, in the first place) the main thought was the Post was the frontier, and it stretched in that direction, the Post being, I do not mean to say immediately on the line, but near the frontiers, and they were the frontiers that stretched in the direction of Orinoco.

Chief Justice Fuller. — It says *the* Orinoco.

Mr Mallet-Prevost. — At all events it is distinctly true that they are frontiers that stretched towards the Orinoco, just as they are frontiers that stretched from the Essequibo.

Lord Russell. — The observation is addressed to your observation that Orinoco meant not the river, but some undefined district between this frontier and the River Orinoco.

Mr Justice Brewer. — That is to say a territory in that vicinity.

Mr Mallet-Prevost. — I understand the word Orinoco was used in that way. Let me take it in the way suggested here, and let me assume for the sake of argument that when Orinoco is referred to the person had in mind the main stream of the Orinoco (which I cannot believe) but let me assume it. We have a reference to a Post located at the Wacupo which is spoken of as a Post that is maintained or was established for the maintenance of frontiers. Now what frontiers? They were the western frontiers of the colony that stretched in the direction of the Orinoco and hence the expression is an expression which pointed to an understanding by the person who read these extracts that the Post itself was at or near those frontiers.

General Tracy. — The letter was written from the Essequibo.

Mr Mallet-Prevost. — Yes, it was put there for the purpose of maintaining the frontier, and instead of using the expression “ western frontier ” it was “ frontier extending toward the Orinoco ”. There is a passage at page 62 of this same volume which relates to the year 1749, at F.

“ The Post in Moruka having become vacant by the death of J. de Scharde, I have placed there the Postholder of Mahaicony, Jan Stoele, who has done good service at the latter post, and in his place in Mahaicony Stephenus Iske, formerly a miner, and of late assistant at the lighthouse, where no assistant is longer needed, the man in command being now able to attend to it alone. I hope this may be approved by your Honours. ”

I cite this passage to show that this Post continued as a mere Post and as nothing more at that date. At page 123 we have another reference to it, relating to the year 1755, at the top of the page. This is “ Minutes of the Court of Justice, Rio Essequibo. ”

“ The respective burgher officers having by Petition submitted a certain project, according to which they were of opinion that, by the removal elsewhere of the Company's trading place in Moroco, the deserters from this Colony would be prevented from escaping so easily from this river to the Orinoco, the same was carefully examined; and seeing that the cost would have to be borne by the Colony, it was resolved to deliberate in the first place with the aforesaid burgher officers upon what footing they considered that the slaves required for that purpose could be furnished by the Colony, the expenses of the Postholders being in the meantime borne, and all matters for the dwellings contributed in the most reasonable and expedient manner, by the Company. ”

These extracts seem to me to need very little comment, they speak for themselves. At page 136 of this volume opposite F.

“ Having been informed by the Capuchin Fathers of Guayana that the Dutch were building a new fort on the River Moruca, to the windward and at a short distance from the Ships’ Mouth of the Orinoco — ”

and that again goes to show how the Moruca was regarded and spoken of as something very near the Orinoco.

“ and well knowing that the Commandant of Guayana would take no step of himself for the purpose of ascertaining this fact or intention — ”

there was considerable jealousy at this time between Ituriaga and this Commandant —

“ I requested him to send there, on my account, a launch with pilots, to proceed to the place and take soundings in the river, and reconnoitre the state of the building, its materials, size, artillery, and garrison. And he replied to me, under date of the 2nd December, in a letter, copy of which I inclose for your Excellency’s information.

What I understand from the Report is, that it is intended to make some plantations for sugar cane growing, and unite for that purpose, with their owners and slaves, a number of Aruaca Indians, who are most in their confidence, to assist in preventing soldiers deserting, as well as Indian slaves and negroes, in that district.

It may be that, for that purpose, and to protect the sugar estates from any outbreak of the slaves, both negroes and Indians, they may construct a small fort with a few small cannon, and guarded by some four or six soldiers. ”

The President. — Do you say that saying it was a short distance proves that it was very near ?

Mr Mallet-Prevost. — I say that it was often referred to; that it was so regarded; and therefore when extracts which contain the expression that they were near the mouth of the Orinoco are taken and made use of for the purpose of showing the Dutch were at the Orinoco, such expression cannot be taken in that sense; and I prove that by pointing to a number of expressions here, where the evident meaning is that the Dutch were in the Moruca, and Moruca was regarded as being near the Orinoco.

The President. — Can there not be the explanation that the Spaniards did not know themselves how great was the distance between the Moruca and Orinoco ?

Mr Mallet-Prevost. — There can be no question the Spaniards them-

selves did know. I shall deal with that question. The impression which has been endeavored to be created by the Attorney General in his opening, that there were no Spaniards and the whole thing was Dutch, stands much on the same basis as his argument as to Dutch Trade. I shall show where the Spaniards were and what knowledge they had of this.

Lord Russell. — Your difficulty in suggesting that this meant a district, and not what it says, is this : it says a short distance — not from the Orinoco — but from the Ships' Mouth of the Orinoco ; it is impossible to suppose he meant not a reference to the river.

Mr Mallet-Prevost. — Not in this case. I did not intend to make that point. I endeavored to show that expressions which referred to the nearness of the Dutch to the Orinoco were expressions that could not be made use of, and ought not to be made use of, for the purpose of showing the Dutch were anywhere to the west of the Orinoco.

Lord Russell. — Then it is what the President suggests, the writer was ignorant of the actual distances.

Mr Mallet-Prevost. — Distances were spoken of comparatively. Speaking today of the distance from the mouth of the Orinoco at Barima to Moruca we might say it was a short distance or a long distance depending entirely on our point of view.

Chief Justice Fuller. — How far is it ?

Lord Russell. — Above 100 miles, I think.

Mr Mallet-Prevost. — The table which has been asked for will be presented shortly. Following the coast line to the mouth of the Moruca from the Orinoco is 155 miles.

Chief Justice Fuller. — How far from the Moruca to the mouth of the Waini ?

Mr Mallet-Prevost. — That involves a point which I might well stop to explain. There is a difference as to the mouth of the Waini in this map and in that map (pointing) and I am glad to have an opportunity of explaining our position in that connection. The atlas prepared for this Case was an atlas adopted for this Case merely. It was a map prepared under the supervision of the United States Commission, and at the time this map was prepared every available authority was examined and there was found to be an irreconcilable discrepancy between the authorities as to the exact location of the Waini mouth. It not being possible to reconcile them the map itself gives two different locations, and those locations have been reproduced in the atlas for Venezuela.

Lord Russell. — I understand neither of those maps was made from actual survey ?

Mr Mallet-Prevost. — Of which ?

Lord Russell. — Of the Venezuelan maps you have been referring to.

Mr Mallet-Prevost. — One of them is an extract from the British Admiralty chart corrected to February, 1891 and corresponds to the map on the wall.

Lord Russell. — By comparison and putting together.

Mr Mallet-Prevost. — We have put both side by side, and in reproducing them for wall purposes as the British map had already a longer distance between Barima Point and the mouth of the Waini, I had the other map made to show the shorter distance.

Lord Russell. — Am I wrong in supposing this is from actual survey?

Sir Richard Webster. — Actual survey; it is known to an inch.

Mr Mallet-Prevost. — I absolutely deny that; there are portions of this that have been surveyed, but to make a statement that it is on actual survey is not borne out by the evidence.

Sir Richard Webster. — We were referring to the coast at the moment; it is actual survey, and the position of the Mora Passage is known to an inch, and I think the one on the wall is made in Paris.

Mr Mallet-Prevost. — It is copied from the British, adding some matters on and leaving off some that are not important; and in the same way this (pointing) is copied from the Venezuelan Case. It is a mistake to state that either has been made on a survey.

Sir Richard Webster. — I was referring to the coast region.

Mr Mallet-Prevost. — Some have been surveyed and something is known. Whether our friends be right as to the Waini mouth I am not prepared to say. I am entitled to lay the evidence before the Tribunal and when the Chief Justice asks me the distance from the Moruca to the Waini I have to give this because I want to give the evidence.

Sir Richard Webster. — I was referring to the coast region, and I say from Essequibo to the Orinoco and for a depth of 50 to 100 miles it has been accurately surveyed. When my learned friend says there is evidence of that Waini mouth, I say there is no evidence whatever beyond the drawing of some map, we know not by whom.

Mr Mallet-Prevost. — Tell me if the evidence of any survey 100 miles in the interior is here. I should be glad to have it pointed to. A number of travellers that have gone here and there —

Sir Richard Webster. — Schomburgk is 100 miles inland.

Mr Mallet-Prevost. — But you cannot pretend that was a survey; he located a number of different points in the interior. It is one thing to do that, and another to survey a country and to present a map and say it represents a survey.

Lord Russell. — The point immediately in discussion is the distance from Barima to Moruca, and that you state to be 155 miles. I suppose you have arrived at that by applying a measure and scale upon this British map.

Mr Mallet-Prevost. — That distance is taken from this map. The Attorney General and myself have been at work preparing a table now in the hands of the printer. I hope to have it on Monday, to lay before the Tribunal. In that table the distances are given in various columns, one showing the distance on one map, and one on another. I have before me only the distances from this map, and I do not know whether the At-

torney General can give me from a copy that he may have the distances upon the British map.

Sir Richard Webster. — I am afraid I have not it here.

Mr Mallet-Prevost. — The distance upon the Venezuelan map?

Sir Richard Webster. — I do not think there is much difference as far as the Moruca is concerned.

Mr Mallet-Prevost. — But as to the Waini there is a difference of some 30 miles. What was it your Honour asked?

Chief Justice Fuller. — From Moruca to the mouth of the Waini.

Lord Russell. — That has a very wide mouth.

Mr Mallet-Prevost. — From Pomeroon to the mouth of the Waini according to the Venezuelan map is 120 miles, according to the British map it is 88 miles, and the difference between those two measurements is explained by the fact to which I have been calling attention; the two maps differ greatly as to the location of the Mora Passage.

The President. — My observation is that the maps of the 18th century have very great mistakes, and are very different, — that is the only foundation of the question I put, because the maps of this time, 1756 and 1757, were very different.

Chief Justice Fuller. — This was at the Moruca whatever the distance was.

Mr Mallet-Prevost. — Yes.

Lord Russell. — Now you were reading from pages 137.

Mr Mallet-Prevost. — Thank you, my Lord,

“ What I understand from the Report is, that it is intended to make some plantations for sugar cane growing, and unite for that purpose, with their owners and slaves, a number of Aruaca Indians, who are most in their confidence, to assist in preventing soldiers deserting, as well as Indian slaves and negroes, in that district.

It may be that, for that purpose, and to protect the sugar estates from any outbreak of the slaves, both negroes and Indians, they may construct a small fort with a few small cannon, and guarded by some four or six soldiers. ”

I think I read that, but there is another statement on page 138 in connection with this same date. This is the enclosure which is referred to in the letter from which I have just read :

“ I beg to inform your Excellency that I have fulfilled the commission with which you charged me of surveying the waters of the Creek Moruca, and of reconnoitring the fortification of which you were informed. The result has been to show that such report is unfounded, for in the whole of that and the other creeks in communication with it there is no fortification of any kind; and the only thing which appears to have given cause

for this rumour is that the Dutch of the Colony of Essequibo are changing the guard, which under the name of Post, they maintain in the Creek of Moruca, lower down to the mouth where it flows into the sea — ”

I think that was the change which was made at one time from this position where there was a Moruca post at the mouth of the Moruca on the sea —

“ a distance of about 6 leagues, for which purpose they have made great clearances and preparations for planting that part, and built the houses which are necessary for the Aruaca Indians and Dutch, but I regret I have not been able to ascertain anything about the reason of these proceedings, and the only thing referring thereto that I have heard is that the object the Dutch have in view is to prevent the negro slaves of the Company and residents of the said Colonies from deserting so easily as heretofore to these dominions, for the said Post being placed at the mouth of the Moruca, they will be able to notice therefrom the vessels which, without entering the river, pass along the coast in search of the Grand Mouth of this river. ”

This points to another use which little by little these posts came to have. First they were trading posts; but when the Essequibo people began to make use of slaves who ran away, these posts were found useful for the purpose of intercepting the runaways, and from now on we shall find constant reference to these posts being used for that purpose.

I pass now to the Third volume where there is a number of references to these posts. The first relates to the year 1764 and is to be found at page 106 below B. This is from the Director General at Essequibo to the West India Company :

“ As soon as I get back to Essequibo I shall regulate matters there. At the post in Maykouny — ”

that was a post considerably to the east of Essequibo —

“ there is one Postholder with his assistant, that being enough for that place; at Arinda there is one Postholder with two men. In Moruka, which is of more importance on account of the runaways and the strangers who pass that way, and who are beginning to play the master there, there is a Postholder and three men, to whom I think of adding another. I shall try and make the necessary arrangements with the Caribs in Cuyuni — ”

and so on; that refers to another matter.

Another reference in this same volume is at page 144 and relates to the year 1767.

“ The fortification of these two Posts, Cuyuni and Moruka becoming a matter of greater necessity every day (these being, indeed, *periculum in mora*), I hope that some good soldiers and especially Protestants, will be sent by the ‘ Laurens en Maria. ’ ”

indicating that this Moruca Post was a post which was at the limit of the place where the Dutch prepared themselves for defence, when defence was necessary. At page 154, below C, there is this from the West India Company to the Director General :

“ We hope that you will have found means of frustrating the evil designs of the Spaniards against the Post in Cuyuni; and, however persuaded of the necessity of strengthening both that Post and the one in Moruka, we have, nevertheless, been unable to send by this ship a greater number of soldiers, having had trouble enough to find available ship-room for these few. ”

And again at page 157 between C and D; this is from the Director General to the Company.

Mr Justice Brewer. — That is Gravesande?

Mr Mallet-Prevost. — That was Gravesande at this time.

“ As I could not leave the Post at Maroco without some defence I have provisionally and *ad interim* sent one Diderik Neelis there until I could get a good Postholder, ”

showing that it still continued merely as a post and nothing else. Then at page 160, at the bottom of the page, there is this from the Zeeland Chamber to Gravesande.

“ But we have digressed in order to say that we have declared in our despatch of the 21st September, already many times quoted, that we were fully persuaded of the necessity of strengthening both the Post on Cuyuni and that at Maroco, and that we heartily wish that your Honour may have found means to frustrate the undertakings of the Spaniards. ”

Here again we find them preparing to defend themselves against the Spaniards at their outposts. Then at page 164 just above B.

“ I had the honour to inform your Lordships in my last of the discharge of the scoundrel Bakker.

Having also been obliged to remove Pierre Martin, the Postholder of Cuyuni (because the Indians will on no account have a Frenchman there) as well as the one in Maroco, I have no one there now but the two assistants. ”

And this is a wonderful passage as illustrating the complete control

that the Dutch had over the Indians! They allowed themselves to be dictated to by these Indians.

Lord Russell. — Is that ironical?

Mr Mallet-Prevost. — It is, my Lord, and if there is any doubt in your Lordship's mind as to any of my remarks I shall be glad to qualify them :

“ It now remains to be seen whether the Indians of Maykouny, whither Pierre Martin, has gone, will exhibit the same feelings, in which case I shall have to discharge the man *nolens volens*. I fear very much that it will be so, because in Maykouny they are mostly Warouws (the nation which commenced and continued the work in Maroco) where they came to the Post in great numbers and well armed with the openly expressed intention of murdering a French Postholder had they found one there. ”

Then at page 176 of this volume is another reference and this relates to the year 1768.

“ It is of the utmost necessity that we should have Protestant soldiers. I am certain that your Lordships are convinced of the necessity of this, but how little hope there is of getting them I see from the last shipment which, with the exception of about four, consisted of none but Catholics, and from your Lordships' letter I can only conclude that your Lordships have been greatly deceived.

This ties my hands completely, and nothing can be done at the Posts, which are daily exposed to pillage; the Postholder cannot absent himself for a few days, let alone for a few weeks, as he would have to do to make any discoveries. We have now a good Postholder at Arinda who has done more in six months than the others did in six years, but reinforcements is his daily cry in order to be able to go farther, it being impossible to leave the Post alone among those savage nations without having all his bread and merchandise stolen, and it is inadvisable for any one to go inland unless there are at least two of them, in case of illness, etc. ”

Here again I may point out as the evidence of the wonderful expansion of this Dutch colony breaking its bounds and not having sufficient territory in which to live.

The President. — Take a little higher up opposite C. It is said :

“ This did not matter very much because I had strictly forbidden Jan la Rivière to settle between Essequibo and Orinoco. ”

Mr Mallet-Prevost. — I shall have to deal with that question when I come to consider the question of the history of the region to the west. That was prohibition made by the Court of Policy which was subsequently

confirmed by the Company at home and it was against that prohibition that some smugglers and others at different times went into this region. I shall deal fully with that when I come to deal with the history of the Barima and Waini and Amacura, but with reference to the region I am now dealing with it has reference to the Moruca and Pomeroun :

“ The garrison of the two rivers ought to consist of at least 100 men (as it does in Berbice), but if they are to be Catholics it would be better to remain as we are, and even less, since the proximity of the Spaniards is a standing danger of desertion. ”

There again we have the use of the word “ proximity ” and if the use of the term “ nearness ” by the Spaniards is to imply any ignorance of this region by the Spaniards, certainly the use of the word “ proximity ” is to imply the same ignorance except if the fact be recognised it was a fact that the Spaniards were coming near to that Post.

The President. — Still the Spaniards could say “ *errare humanum est.* ”

Mr Mallet-Prevost. — Yes.

“ This was very much feared when those seven deserted together, and we do not dare to send any one after them, not only on account of the smallness of our numbers, but because it is feared that those who are sent would join the runaways, especially if they have a good boat and provisions. ”

In the second volume of the Venezuelan Case Appendix is a passage at page 209. This is a letter from the West India Company to the States General in 1769 and speaks of the means of defence of the colony of Essequibo and at the top of page 209 the Company makes this statement. I call attention to the use of the word “ frontiers ”;

“ Secondly, as to the forts and works erected on the frontiers of Essequibo the matter stands in this wise; in the mouth of the river of Essequibo on Great Flag Island is situate the fort Zeelandia, the chief castle or fortress of the whole colony; the entrance of the river is moreover protected on the other side by a battery or look-out watch. ”

I might call attention here to the fact that about the year 1735 or 1736 or 1737 or thereabouts the head of the colony which had been at Fort Kijkoveral was moved from there and thereafter the fort was upon this island called Fort or Flag Island which came to be practically the capital of this colony, if I may use the word capital.

Lord Russell. — What date was that ?

Mr Mallet-Prevost. — I do not exactly recall the date but it was between 1730 and 1740. It is this paper of 1769 which refers to the fort on Flag Island.

Lord Russell. — The fort still remained on Kijkoveral?

Mr Mallet-Prevost. — The ruins of which we have here, my Lord, but the interior of it was at that time abandoned, the whole colony moving towards the coast; so much so that the terms Upper Cuyuni, Upper Massaruni, and Upper Essequibo may be applied to that which had been the centre of the colony before at the junction of those rivers.

“ In the mouth of the river Demerara is placed a battery or lookout watch; at the south of Demerara, on the river Mahaicony, is a post, called Mahaicony.

Above in the river of Essequibo, towards the Portuguese side, above the little river Rupununi, is a post named Arinda.

There is a post in the river Cuyuni, towards the Spanish side.

And lastly, one more post, situate between the little rivers, or creeks, Moruca and Wacupo, also towards the Spanish side.

Other forts or works there are none in the colony of Essequibo *cum annexis.* ”

I once more call attention to the words with which this extract begins, that this is an enumeration of the forts and works erected on the frontiers of the Essequibo. I pass now to the fourth volume of the Appendix to the British Case and I call attention to page 100 which is an extract, under date of 1772. This will be found at the bottom of the page and it is from the Director General of the West India Company.

“ The numbers of the runaways increasing daily, this matter will end in the total ruin of a great many plantations, unless efficacious remedies be adopted.

The former Postholders in Maroco were able to do something to arrest the progress of this evil, they having at least six or seven hundred Indians around that Post — ”

and I call attention to the fact now. It will be emphasized later and many times, that the Indians which were at all controlled by the Dutch were the Indians that were immediately around their posts —

“ some of whom they could always have out at sea, but the unauthorized attacks of the Spaniards have driven these natives away, and the Spaniards even came to the Post, as your Lordships know, sword in hand, to drive away or carry off the few that still remained, and succeeded only too well in doing so. ”

Then at page 138 is a document which relates to the year 1775 at line B. This is from the Postholder at Moruka to the Director General of Essequibo and, as the Attorney General pointed out, when he read this, the heading which is printed is a mistake.

“ I therefore feel compelled to inform your Honour of this as speedily as possible, because I do not know what I am to do in this matter — that is to say, with a Post without any men or Indians.

Therefore I beg your Honour to send me a reply how and in what manner I am now to act. ”

This is a Postholder supposed to be exercising political authority to a distance of some 155 miles, to Barima Point, and is there (at his post) without any men or Indians.

Now the next passage is at page 184, line F. This is from the minutes of the Court of Policy of Essequibo :

“ That no means can be applied to prevent desertion towards the interior as the outlets of the estates are dense forest and inaccessible by the whites. That there lies however on the frontier — ”

and here again we have this expression made use of —

“ That there lies, however, on the frontier and in the direction of Oronoque, a Post in the creek of Morocco and Wacquepo, which this Court is of opinion would be of greater use if the same was removed to the sea at the angle of the said creek, and a qualified Postholder, an Assistant, and a good number of Indians placed thereon.

“ That the Court has the idea that, at this Post, there would be of great service, as Director, a certain mulatto, here named Jan Anthony, who has already made himself known for vigilance in respect of runaways, etc., and made himself feared by them.

The other members of the Court dissenting in idea with the Captain-Commandant, so far that their Honours judge that the Post should still further be strengthened by a sergeant, corporal and eight private soldiers. ”

Here again in 1777 by the Court of Policy which was the Governing body in the colony of Essequibo this post is referred to as being a post on the frontiers of the colony.

I will call attention again to an extract in the Second volume of the Venezuelan Case Appendix, page 277 which are extracts from a memorandum drawn up by the Council of the Indies for the King of Spain as to his territorial extent and rights in Guiana and it relates to the year 1778; near the bottom of the page, N^o 17 :

“ The Commandant of Guayana, Don Manuel Centurion, in obedience to the said Royal command, sent, together with a letter dated April ninth of 1778, exemplified copies of the inquiries had regarding the acts complained of by the Director of Essequibo, stating, with reference to the results thereof, that

they were all false charges through which Gravesand had endeavoured to arouse the States General against the proceedings of the Spaniards — ”

I might state in explanation of this that that is a reference to remonstrances presented in 1769 by the Dutch to Spain. Spain ordered an investigation to be made as to the acts alleged and there is a report made by the Spanish to the home authorities upon some of these points :

“ that they were all false charges through which Gravesand had endeavoured to arouse the States General against the proceedings of the Spaniards, erroneously supposing that the Dutch had ever been in possession of the rivers or rivulets that empty into the sea from the Essequibo to the Orinoco, because they had there no establishment other than a straw thatched hut on the eastern bank of the Moruca, or Maroco, which had been tolerated for forty years back, intended to prevent the desertion of their slaves; which toleration degenerated soon into the iniquitous trade of buying from the cruel Caribs the Indians they enslaved, surprising the other nations subject to Spanish rule. ”

There is now an extract in the Appendix to the British Counter Case which comes next in order of date, at page 229 E. This refers to the year 1779 and is taken from Inciarte's Journal.

“ The post is an ordinary house roofed with truli and barred with large beams without mud and wattle; it has two four pounders and sundry swivel guns all dismantled; it has no fortification nor carriages for mounting the said guns. In going along the River Moruka towards the sea mouth the said post lies to starboard at the distance of a pistol shot from the bank of the said river. ”

Possibly in connection with this extract and those that I have been reading it might be interesting to the Tribunal to look at one of the maps which is reproduced in our atlas and which is probably intended to represent a picture of this post or of one very like it. It is Map 68 which is attributed to Chollet in 1791 or earlier, and at the lower left hand corner is a picture which represents a sort of stockade or fort or house or whatever it may be called which constituted the Dutch occupation of these rivers for more than a century. This is the house which Inciarte is describing as —

“ roofed with truli and barred with large beams without mud and wattle — ”

and so on.

In the 5th volume of the Appendix to the British Case are two extracts

I shall read and the first is at page 27. This relates to the year 1784; at the top of the page.

“ In accordance with the resolution of forming a scheme for building a Post in the lower river taken by the Court in October last, and on resuming deliberations thereon, appeared in Court J. Bertholy, who laid over a plan, pointing out to the Court the place and mode most suitable for putting this scheme into execution, which, after examination, and being found good, the Court held that the place on which the said Post shall be built shall be on the mouth of the Morocco, on the same spot where formerly the old Post was built, being the lands previously in the possession of Frederick Beystenteufel.

That, for the purpose of building this Post, and as Commander of the same with the rank of Ensign Bearer, is appointed the said J. Bertholy, with a yearly salary of 800 f., and an Ensign Bearer's ration, besides a premium of 100 f. for every slave or runaway that may be captured by the men under his command at the time and brought here to the fort, subject to this condition, however, that only 50 f. of the said 100 f. shall come to him, the Commander who shall be in command of the Post at the time, the remaining 50 f. shall be divided between the men or Indians who are engaged in the services of the Post.

That, in building the Post, making drainage, putting in a koker, and erecting a house and sheds, shall be employed the slaves in chains.

That, for the purpose of forming the future garrison of the Post, shall be given to him six mulattos, with a monthly salary of 25 f. and a soldier's ration to each of them, without the right, however, of demanding anything from the 50 f., which shall only be used for paying and encouraging the Indians.

That the said J. Bertholy shall further engage twenty-five or thirty Indians permanently in the service of the Post, and that the maintenance of them shall be paid by the Colony or the Honourable Company.

That there shall be given to this Post a flag, two time glasses, two cannons, two swivel-guns, six blunderbusses, six swords, a few pistols, with the necessary cartridges, powder, and shot, and whatever may be further needed; also a light sailing-boat, carrying four swivel-guns, a flag and pennant, a buck's canoe, and two buck-shells.

That there shall be given to the said J. Bertholy a uniform and sword according to the rank conferred on him by these presents, and also an authority for engaging the six mulattos, and an instruction which he shall be bound to follow strictly. ”

The post, therefore, by 1784, 100 years after the destruction of

the last Pomeroon colony was evidently growing in great importance because the Commandeur was to have a uniform and six mulattos under him. That is the way in 100 years this Dutch Colony had grown.

Then at page 29, are certain instructions to this commandant. The first article;

“ The aforesaid J. Bartholi shall as soon as possible betake himself to Moruca, and there employ the necessary Indians to cut a path, so that the necessary digging can be done there; moreover, he shall notify to the chief official of this river the day of his departure thither, from which day his pay shall begin; and, furthermore, shall see to it that the Post there be put in order, in accordance with the Resolution passed on this subject by this Court on the 5th November, 1784, and herewith handed to him. ”

Then Article 3 :

“ He shall keep a good journal of what is done by him in behalf of the post and very particularly note the day and date when he engages the specified six half-breeds in the service of the post. ”

Here again let me call attention to a fact which I mentioned yesterday. During the whole of this Dutch occupation we are dealing with a commercial company which kept an account of everything it did; if a mulatto was engaged, if a negro was sent off to salt fish, or half a dozen nails given to the carpenter; it is put down in these records. It is most important to keep this in mind when we come to consider what the alleged operations embraced and to set against them the records of Spanish tradings and dealings which were clandestine as I pointed out yesterday and which were engaged in by individuals and forbidden by the Government of which of course no record was kept.

Article 4 :

“ He shall take care that at least every two months a copy of his journal be placed in the hands of the chief official of this river, and at the same time report as to the condition of the Post. ”

Article 5 :

“ He shall take good care that the post be kept in proper order: shall, for the benefit and welfare of the post, treat all Indians properly; shall enrol and take into protection about the Post — ”

I call attention to these words —

“ about the Post as many of them as his means shall allow. ”

That did not mean that he was to go 155 miles from his post to the mouth

of the Orinoco and point Barima. In all these instructions there is no suggestion he was to exercise any control whatever beyond the Moruca and Pomeroon.

“ Shall enrol and take into protection about the Post as many of them as his means shall allow; and, besides, shall not suffer any wrong to be done (by any person no matter who) to any belonging to these tribes. ”

Article 6 :

“ He shall be required at least every four months to come in person to Fort Island, in order to show himself to the chief official and the Government and receive such orders as it may have been decided to give him, on which occasion he must always bring with him as many Indians as is possible or as can be spared at the Post for making this voyage. ”

Article 7 :

“ He shall take care that both at sea and on land strict and exact watch be regularly kept, and also that no boats pass the Post without his knowledge. ”

That was his station, and it was what took place there he was to keep account of, and it was there he was to exercise his authority.

Page 30, Article 9 :

“ All boats coming within the neighbourhood of the Post shall be obliged to come to his landing and show their pass issued by the chief official, and no one shall be allowed to pass the Post without such Pass, but shall at once be apprehended by him and be taken to the chief official of this river. ”

This with many other passages have been made use of by our friends on the other side to show the control the Postholder had of the Barima river, and the Waini river and the rivers lying between the Savannah and the Orinoco, because he was charged, being at a Post in the Moruca to see that boats that passed that Post one way or the other passed by his leave, he is magnified into an official that had charge of all these rivers that were appurtenant to the Great Moruca, the Great Wiapoco, the Barima being something insignificant in comparison. The approach is said to be from this side, and they are completely cut off from the Orinoco side.

Chief Justice Fuller. — On page 28; I do not know if you read that or not.

Mr Mallet-Prevost. — I did not read that.

Chief Justice Fuller. — The desertion of the slaves, and 100 florins premium.

Mr Mallet-Prevost. — I do not think I read that. I read something similar, but I did not read this.

Chief Justice Fuller. — Those are the proceedings where the instructions you have been reading were adopted.

Mr Mallet-Prevost. — I read from the preceding page. I am by no means exhausting the evidence; I have some regard for the Tribunal, and not only that, I think that a few of these extracts very sufficiently demonstrate what the condition of that Post was, so that if the Tribunal now and then lights upon some passage which I have omitted the Tribunal may be very sure there are dozens and dozens of such passages. I cite quite sufficient to demonstrate my position.

Lord Russell. — What do you understand by “ his landing ” in Article 9, page 30?

Mr Mallet-Prevost. —

“ All boats coming within the neighbourhood of the Post shall be obliged to come to his landing ”.

The post as was shown in the map 68 to which I invited the attention of the Tribunal was a Post right at the edge of the water.

Lord Russell. — Of what river?

Mr Mallet-Prevost. — At times of the Moruca, at times of the Wia-poco, at times of the Pomeroon; at this time it was at the mouth of the Moruca.

Lord Russell. — Do I understand that there could be any way of showing more clearly (whether it was done rightfully is another matter), the attempted claim of dominion than that?

Mr Mallet-Prevost. — At the mouth of the Moruca none at all. There was none there. At times these posts were moved from the interior because the slaves found they could slip away, and the Post was moved down to the coast to be able to apprehend these runaways, and the Post was moved from time to time as the needs of the colony required, but the travel was always by boat, and hence the boats that passed were enforced to come to the landing, which was the dwelling of the Postholder himself.

Lord Justice Collins. — How far do you suppose the tribes round the post would extend, because he is not to suffer any wrong to be done (by any person, no matter who) to any belonging to these tribes.

“ Shall enrol and take into possession about the Post as many of them as his means shall allow. ”

Mr Mallet-Prevost. — I have pointed out more than once it is impossible to say such a tribe inhabited such and such limits at such a time; they changed. The meaning of this phrase is clear. In order to know the duties of this Postholder we must read the full instructions and we see from those instructions it was clearly intended he should remain at the Post, and in fact he was instructed not to leave the Post, by some later instructions.

Lord Russell. — He shall not be at liberty to go by this one.

Mr Mallet-Prevost. — That is what I had in my mind, and yet he is

instructed to take care of these Indians. It certainly could not have been very far, they must have been in the immediate vicinity of that post.

Lord Justice Collins. — He might order them to bring people in from a distance.

Mr Mallet-Prevost. — I should ask for evidence of that fact, the evidence is certainly lacking.

Lord Justice Collins. — We have had a good deal of evidence of Indians being summoned and brought in.

Lord Russell. — Now you are opening an illimitable perspective to us.

The President. — Then we will adjourn till Monday at 11 o'clock.

(Adjourned accordingly.)

TWENTIETH DAY'S PROCEEDINGS JULY 31st 1899

The President. — Mr Mallet-Prevost, the Tribunal is ready to hear the continuation of your argument.

Mr Mallet-Prevost. — When the Tribunal adjourned on Saturday last, Mr President, I had finished calling attention to the instructions which were given to the Pomeroon postholder in the year 1785, instructions which, among other things, contained an article directing the postholder not to leave his Post. I called attention at that time to the significance of that particular instruction in connection with the alleged exercise of political jurisdiction by the Pomeroon postholder at great distances from the Post, Barima Point itself being 155 miles away.

This morning I desire to call attention to an extract relating to the year 1789, and to be found in the second volume of the Appendix, Venezuelan Case, at pages 242 and 243.

Mr Justice Brewer. — You are still on the Pomeroon?

Mr Mallet-Prevost. — I am still on the Pomeroon, Mr Justice Brewer. This is an extract from the proceedings of the Court of Policy of Essequibo and Demarara, proceedings which were transmitted to the West India Company :

“ Which having been heard, and the Secretary having been thanked for his communication, the proposed question was further discussed, and the conclusion reached by this Court was that in view of the Secretary's communication, it should be tried whether through letters from the Governor Marmion to the Court of Spain, a like favorable resolution might not be obtained as already existed with respect to the island of Trinidad : that in case this should not succeed or were not to the taste of the States General, there were no better means for preventing this running away than to maintain and keep cruising, small armed boats, built like the Spanish lanchas, namely very long, narrow, and shallow, to which the promise should be given that all the runaway slaves they bring back will be bought of them for the Colony at their full value; this would greatly stimulate these people and make them vigilant. These boats would also greatly contribute towards protecting the post of Moruca and the Indians living there against molestation by the Spaniards from the Orinoco. ”

This extract points, once more, to the fact that, at that time, the Post of Moruca was practically treated as a frontier; that the Indians that were

in question there, were the Indians who were living about the Posts, and that the protection, which it was proposed to give to that place, and to those Indians, was against the Spaniards coming there from the Orinoco. This was in the year 1789.

The next extract, at page 243, is also pertinent in this connection. This is an extract from a report of certain Commissioners, who had been appointed by the States General. One of them, van Grovestins, was subsequently for some years the Governor of Essequibo. This is what the Commissioners have to say : —

“ The river of Essequibo is cultivated on the eastern side from Bourassiri to Bonnasigue, and on the western side from the Tœlœkabœka to the Supinaam Creek, being a distance of nine thousand six hundred rods. However, many more lands here could be brought under cultivation if the vicinity of the river Orinoco did not prevent it, for the Spaniards there sometimes come with armed boats, called lances [lanchas], as far as Moruca and by force carry away the Indians who dwell there, enslaving them, while on the other hand our negro slaves, when they run away, betake themselves to Orinoco, where they are proclaimed free. ”

The western limit of this actual settlement, which is referred to by these Commissioners, and which is the Supinaam Creek, is within the very mouth of the Essequibo River at *this* point (pointing it out on the map on the wall) : and the reason which he gives for the fact that the occupation had not been extended beyond that point is significant.

Then at page 244, and as part of this same extract, occurs this significant passage : —

“ It behooves here to say a word of the so called Postholders. These are employees of the Company who dwell on the various frontiers in order to foster the good understanding with the Indians. ”

And this merely confirms passages to which I called the attention of the Tribunal on Saturday, that the postholders were regarded as persons who, for one purpose or for another, for trade or for stopping slaves from running away, were placed upon the frontiers of the colony itself.

In the year 1792, the West India Company expired, and the colony was assumed by the Central Government. It so continued until the year 1796, when it was occupied by the British temporarily. It was resumed by the Dutch in the year 1802; but I want to call attention to another extract, prior to the year 1802, and relating to the year 1794, a most important extract, which will be found in the 5th volume of the Appendix to the British Case, on page 147, at the top of the page. This is a statement made by the same Commissioner, who was one of those that made the report from which I have already read, van Grovestins. He was, at this

time, Governor of the colony. He made a tour of inspection of the colony, and went to Pomeroon; and this is what he has to say with regard to that part of the then Essequibo Colony :

“ On the 15th May, 1794, between 8 and 9 o'clock in the morning, I went on board the cutter of Mr Blair, whereupon we set sail, Mr Smeer, Captain in the navy, accompanying us at my request in order to profit by this opportunity for taking soundings of the coast and of the entrance of the River Pomeroon.

And, in order more fruitfully to put my conclusions on paper, I gave orders to the two surveyors, Messrs Chollet and Van der Burght, to go with me.

After a very speedy voyage of 24 hours we arrived off the River Pomeroon, and being not too well at home on that coast we were obliged to stay at anchor overnight. In the morning at daybreak we went on as far as the Creek of Moruca, which up to now has been maintained to be the boundary of our territory with that of Spain, upon what basis I do not know. It will be of the utmost necessity to define that boundary line once for all.

The Government Postholder Bartholy came to meet us with his canoe, in which were fourteen Indians of the Warrow nation; upon the advice of the aforesaid Postholder we sailed with 6 feet of water into the Creek of Moruca, and thereupon went on shore at his place.

A very noteworthy thing is that in the rainy season the Spanish lanchas come from Orinoco as far as Moruca by an inland way, passing from one creek into another, and they transport in this fashion their horned cattle and mules, and find on the way the necessary sustenance for the cattle, both grass and water.”

This is a most significant passage, Mr President. I shall have occasion to point to it later when I come to consider the question of trade. During the early part of the 18th century, the trade between the Dutch and the Spaniards was mainly a trade carried on by the Dutch going to the Orinoco. There were intervals when that trade was completely suspended; but, from about 1760, or thereabouts, on, the Dutch trade to the Orinoco completely ceased, and thereafter the trade was carried on by the Spaniards themselves to the Essequibo, making use of these same inland passages; and, so long forgotten had been the Dutch trade in the opposite direction, and for so many years had the territory lying beyond the Moruca been considered as territory with which the Dutch had nothing to do, that we find in the year 1794, the Dutch Governor, upon a visit to this place, remarking with surprise, as something new to him, upon the passage from the west to the Moruca, and to the coming of the Spanish “lanchas” there as a usual occurrence; and we have, what is most significant in this connection, and I shall call attention to this again when I come to speak of the subject of claims, we have the statement by the

Dutch Governor himself in the year 1794 that up to that time the Moruca had been treated as the boundary. I am not putting this statement forward as a statement which is binding upon one Government or the other. I, at this time, am putting it forward simply for this purpose, to show that the Dutch Governor was stating, as a matter of fact, that the Moruca as a matter of fact had been treated for years past as the boundary between the Dutch and the Spanish, and, of course, it rebuts at once any inference that might be drawn that this same Governor, or those immediately before him, had been exercising any jurisdiction whatever, or any control, beyond that line. Of course, Mr President, I shall come to deal with that subject separately by and by; but, in passing, I just desire to call attention to the point now. Then he goes on :

“ Those inland voyages are made through the following creeks and rivers : from Moruca one comes into the creek Habon [Itaboe?] and Barimani, then into the River of Waini, which is as large and deep as the River of Demerara. At the point of arrival, two tides away from the mouth of the River Waini, to wit, on the south-western corner, there is a creek named Moera, which one goes up a couple of hours, when one passes into Rio Barima, about three tides from the mouth of the sea. That river is much larger than Rio Demerara, and is reckoned twenty hours distant from the Post of Moruca. From the mouth of Rio Barima to Rio Orinoco one counts 3 [Dutch] miles distance; between these two rivers there is again a creek named Amacura.

“ This report was made to us by the Postholder Bartholy, who in former times has made various voyages to Orinoco.

That is the source of his information; and it points, as I say, to the fact that, however frequent those voyages may have been at one time in connection with the trade carried on with the Spaniards in the Orinoco, it was something which had for some years past been practically forgotten. Then :

“ There being nothing more to say about the navigation of the Spanish lanchas I shall again go on with my journal.

Captain Smeer calculates the distance from Demerara to Pomeroon to be fully as far as is the Maas from Texel. At the Post of Moruca there are in the Government's service there one Postholder, two assistants, one sergeant, and six privates, and fourteen Indians, who remain there for the assistance of the Postholder. ”

I come now to the year 1802, and I first call attention to an extract at page 175 of this same volume.

Lord Justice Collins. — Perhaps you might read the next two paragraphs with respect to the influence over Indians.

Mr Mallet-Prevost. — Immediately following, Lord Justice?

Lord Justice Collins. — Yes, just after where you stopped.

Mr Mallet-Prevost. — I will read on :

“ These Indians are relieved every four months by others, but of the same nation : if perchance the Postholder needs more Indians, he sends word to the so-called captains of the Indians in the respective districts or villages.

The correspondence between the Postholder and the Chiefs is carried on by sending a piece of string ; at the one end he makes as many knots as men are wanted, and at the opposite end as many knots as they must stay weeks.

I am very glad that your Lordship called attention to that passage. I shall have a few words to say, not many, with regard to the Indians in this region, because there is very little to be said, but this passage is significant, and it is significant because we have it in connection with the definition of the Dutch boundary which the Dutch Governor himself gives. He states above that the Moruca has been regarded as the boundary, and hence when at the bottom of the page in the passage to which your Lordship has been good enough to call my attention, he speaks of sending to villages for other Indians to relieve those that are there, it seems to me a fair inference that the Indians in the villages to which he referred must have been within that Moruca line. I shall not anticipate at this point what I have to say with regard to the Indians, but that subject can be dismissed very briefly, when I have finished the history of this region.

Mr Justice Brewer. — You should also read the passage at E, on the same page.

Mr Mallet-Prevost : —

“ We should never lose sight here of gaining the Indians more and more to our interests, especially at present, if we wish to enter upon the cultivation of the river and coast of Pomeroun. Great advantage may be derived from them in felling the heavy timber ; beside that heavy work they would be a support for the whites there in case the slaves should grow discontented : the negroes are naturally afraid of the Indians. ”

There are many passages such as that, and there is no question at all, and I have no desire to deny it, that there were Indians about those Posts, and that the Indians that were about those Posts were Indians that were to a greater or a less extent under the control of the Dutch. I think that the evidence will show that it was never a compulsory control that was exercised over them. There are a few instances, a very few, that might be cited in support of that. Generally the relation between the Indians at this very position was a relation, as is over and over again pointed out in our Case and Counter Case, really of allies and friends and neighbors,

and not a relation of subjects to Governors. But that whatever those relations were, they were relations that were limited to the Indians that were at and near the Posts, is a point which I shall deal with separately later on, and it is fully established by the evidence.

I turn now to page 175 and read an extract at the bottom of the page, opposite E, which relates to the year 1802 : —

“ While I am finishing this letter, the Postholder of the Post of Moruca comes to report that the detachment for that Post arrived there three days ago, but that everything is in ruins, and that the battery cannot stand for six weeks more ; that an entirely new dike of some sort must be made there and all the buildings set back ; that the few cannons found there are lying flat on the ground ; that the gun-carriages are rotten, and that the English have cut and slashed everything to pieces ; in a word, that things are in a hopeless state. I have not yet received a report from the officer who was ordered thither, and we shall have to await it ; but, according to these details, there is not much good to be expected. ”

That, of course, was the result of the taking of the place by the British, but it shows that, in the year 1802, there was nothing there except the ruins of the Post and of the small attempt at fortification, which had been made in years gone by in connection with that Post, treating it as I have many times pointed out as the frontier of the colony in that direction.

At page 192 of this same volume is another passage relating to the year 1809 ; I read from the top of the page. It is an extract from the minutes of the proceedings of the Court of Policy :

“ The Governor also communicated to the Court a Memorial which had been presented to his Excellency by a number of planters residing in or about Pomeroon River on the further west coast of Essequibo, stating the apprehensions they entertained in consequence of the intention of the Government to abandon the Post of Morocco, and praying that an officer's guard with two or three pieces of ordnance might be stationed for their protection at the entrance of Pomeroon River ; in consideration of which they express their readiness to remove, at their own expense, the buildings from the Post of Morocco to the entrance of Pomeroon River. ”

By this time, as I shall show in a moment, the plantations along the Arabian coast were extending in the direction of the Pomeroon river, some were near there, though they never reached it, and this was an appeal for protection from the planters that were in that vicinity.

“ And his Excellency added that previous to his recommending the prayer of the Memorialists aforementioned to the con-

sideration of the Commander-in-chief, he would be glad to know the sense of this Court on the subject of the said Memorial.

The members returned their acknowledgments to the Governor for his attention, and begged leave to express their opinion that the granting to the Memorialists of the protection prayed for by them would no doubt greatly contribute to the security of the very valuable, though distant, part of the Colony where they resided; ”

showing very clearly how the Pomeroon was regarded at that time, from the Essequibo. It was a distant part of the colony. We come to 1812 and I call attention to a passage at page 201.

Lord Russell. — Will you look back at page 178 for a moment; that seems to show a list of petitions of various people for grants and it strikes my eye à propos of the observation you just made :

“ Various Petitions for grounds on the aforesaid west coast, or the Pomeroon, or between Moruca and Waini, presented to the Council. ”

Mr Mallet-Prevost. — I have taken that subject up especially in connection with the Waini, and I shall in a moment show that that petition was refused and nothing was done under it.

Lord Russell. — No, but upon the point of what was considered to be the territory over which they claimed a right. You said it had not reached Moruca, this speaks of grants of land being sought between Moruca and the Waini.

Mr Mallet-Prevost. — Yes; this is in 1803, some years subsequent to the statement of the Dutch Governor in 1794. That was a petition presented by private individuals and was not granted, and when I come to deal with the question of claims and dominions I shall show what the sense of the authorities was on that point; I do not propose to pass that by.

Mr Justice Brewer. — This was during Dutch occupation.

Mr Mallet-Prevost. — Yes; during the Dutch occupation.

Lord Justice Collins. — It is evidently during the Dutch and the English occupation. The preceding paragraph shows it.

Mr Mallet-Prevost. — Then at the bottom of page 201, — this is a memorial to the acting Governor and commanding chief of the colonies and at this time, of course, the colony was in British hands.

“ Shew unto your Excellency :

“ That from the late declaration of war by the North Americans against Great Britain, and the great probability of their being joined by the Spanish Republicans of South America, the latter to whom your memorialists are so very contiguous, and from the defenceless state of Pomeroon, they are exposed both by sea and land to the incursions of an enemy.

“ Your memorialists therefore hope your Excellency will

take their situation into serious consideration, and allow a post to be erected, with some cannon placed at the entrance of the river, and a military guard stationed there; or to grant them such protection as unto your Excellency may seem meet to render them more secure. ”

This is a similar petition by the planters along the Arabian coast and it shows that even the post which during the Dutch period had been maintained at the Pomeroon and Moruca had been abandoned, and the planters now ask that a post be erected there for their protection. One more passage in this connection relating to the year 1813 and to November of that year you will find at page 217 of this same volume. This was on the eve of the formal transfer of the colonies to Great Britain; opposite C, it is taken from Lieutenant-Governor Codd's letter. —

Lord Russell. — At the time that we have now got to, the energies and attention of the great European powers were all, of course, engaged in the great war that was then going on.

Mr Mallet-Prevost. — There is no question as to that.

Lord Russell. — And for the time these colonial interests had comparatively small importance?

Mr Mallet-Prevost. — Yes; and it should be called attention to, not only in reference to any efforts British or Dutch might make but small also. It applies to all.

Lord Russell. — Certainly.

Mr Mallet-Prevost. — It in no way takes away from the fact — and it is a fact to which I call attention — the condition of the Pomeroon throughout the whole period prior to 1814 was a condition which pointed to its treatment by the Dutch as a frontier and pointed to the impossibility of control, by the Dutch postholders, beyond the Pomeroon and Moruca. At C is this passage :

“ I have also ordered the Postholder Linau, at Moroco, to come up with selected Indians, and I intend making him scour the woods between the Arabian coast and the Pomeroon, with a view to dislodge any runaway negroes who may have established themselves there, and at the same time to remain close to the disaffected estates during the Christmas :

and that introduces us to a subject which I shall very briefly treat — the subject of the plantations and the extent of those plantations. It has been stated over and over again that the Dutch plantations extended to beyond the Pomeroon and the Moruca. That contention was put forward by the Attorney General in his opening. He brought some maps to prove that. It was a contention made by Schomburgk himself and it is one which I shall very briefly show to be untenable. The first passage to which I shall call attention in that connection is in the second Venezuelan Case.

Lord Russell. — What is the proposition now? What is your thesis?

Mr Mallet-Prevost. — That the Dutch plantations along the Arabian coast never reached as far as the Pomeroon. There are only six or eight brief references I shall give. It will only take a moment but it demonstrates the proposition, without dispute. In the 2nd Venezuelan Case at page 197 we have the earliest reference to which I shall call attention in connection with plantations :

“ Three excellent slaves of John Liot, carpenters, have run away to Orinoco ; ”

Then a little further down :

“ That Governor bragged considerably to this man, and said that the land belonged to His Catholic Majesty as far as to the bank of Oene, and that he would come and seize those plantations which lay on Spanish territory. The bank of Oene lies along the western coast of this river and there are several plantations below it. It therefore is very well that the militia captain Tierens has been so prompt in executing the regulations, the inspection of that company having been completed and the roll thereof already handed in ; it consists of nineteen men. ”

Oene, which at this time marked practically the limit of plantations is right there (pointing on the map) at the very mouth of the Essequibo.

Mr Justice Brewer. —

“ As far as to the bank of Oene, and that he would come and seize those plantations which lay on Spanish territory. ”

Does not that imply there were some plantations west of that bank?

Mr Mallet-Prevost. — There are several plantations below it. I should hardly think so but if so it speaks of several plantations. I refer to this extract as being the earliest which seems to indicate the limit. It may have been there were a few on the other side but that is practically the limit as mentioned here. In 1772 there is a reference in the 4th Appendix, British Case, page 103. This is a statement by the Director General who at that time was still Gravesande :

“ Very many plantations having been laid out on the west coast of this river, Bouwman, the surveyor, who measured all those plantations, has at my request made a chart of that coast as far as Pomeroon and the Post of Maroco. From the actual mouth of the Essequibo to the creek Hamalte there are twenty-seven plantations ; from there to Mana Caboera there are about six thousand roods, and from Mana Caboera to the mouth of Bowaron Ollira there are nine thousand roods (taken up), so that we are beginning to get close to Pomeroon, and we shall

therefore have to discontinue making fresh grants of ground in that direction.

What astonished me most, my Lords, was to see in these exact plans the situation of the Post in Maroco; I could never have imagined that it lay so far up the creek from the sea-coast. It lies upon and fully commands the inland road through the itabos, which is used by the inhabitants and the Spaniards — ”

and here we have again a reference to the Spanish trade in this direction —

“ as the safest, but it is absolutely useless as far as regards the runaway slaves, who pass along the coast by water, that being just beyond the reach of the Post. ”

Then in the 5th Appendix to the British Case we come to the year 1785 at page 34. This is a memorial of certain planters along the coast presented to the States-General of the Netherlands.

“ The extent, from the Creek or River Mahaica, east of Demerara, to beyond the Creek Capoei, west of Essequibo, along the coasts and islands, can be fixed at about 15 Dutch miles ; ”

I think that is equivalent to sixty miles —

“ which great basin or bay is mostly provided with plantations, to which are then to be added those situated within the mouths of the two rivers, and on the creeks and canals, which, particularly in Demerara, makes a great number. ”

“ In the meantime, persons of enterprise, both in America and in Europe, are immensely increasing by their cultivation the value of these lands; witness, as regards this Colony, the incalculable augmentation of the intrinsic value of the river Demerara and its districts from the first opening in 1746 to the present day; what a treasure of welfare in every regard does not this cultivation bring into the bosom of the whole Republic! ”

I might call attention right here, in connection with that, that from the opening of the Demerara in that year the importance of that river grew and grew, so that towards the end of the century Demerara was far more important than the Essequibo. The seat of Government was removed from Essequibo to Demarara and Essequibo was left as a mere appendage of the other river.

“ Of this, one will become most strikingly convinced when in contrast one considers what even at the present day the Fatherland and its inhabitants derive from the possession of the as yet uncultivated River Pomeroon. ”

“ And as for Essequibo, its western sea shore is capable of cultivation from below the Creek Capoei (where as yet only very few plantations lie) to the River Pomeroon, aye up to that of Moruca, and, if we should succeed in making a Cartel with respect to the negroes absconding to Orinoco, no reason appears why both the River of Pomeroon and that of Moruca might not with an increase of colonists also be turned into productive possessions and changed in character in the same way as since the year 1746 has happened with Demerara. ”

So that at that time the colony was not suffering from any lack of lands. If the Court will kindly keep this volume before them one moment I will call attention to a passage in the Appendix to the British Counter Case, page 374 B, which has reference to the year 1798.

“ Petition read of Jacobus Andries asking to be favoured with 500 acres on the lower west shore of the river Essequibo, next to the last grounds granted there, and that letters of commendation to their Honours may be given him.

The Court on deliberation require that the petitioner first have the desired land surveyed, and a map of the Surveyor produced so that the Court may decide accordingly. ”

And then at page 375 of the same volume under date April 26th, 1790, we have this statement :

“ The Director-General proposed because of the confusion and disorder in the giving of grounds on the west sea coast of Essequibo, that before disposing of the now forthcoming petitions, that it would be well to charge the Surveyor to form a general map of the lands there still ungranted as far as the mouth of the river Bouweron, and to divide it into suitable holdings, each of 200 rods facade.

The proposal was adopted by the majority of voices. ”

I may state in passing that the maps which were made in consequence of this and other similar orders and which show plots of ground, not only on the Pomeroon but on the Moruca itself have been misunderstood by our learned friends on the other side and have been taken as showing actual plantations there. They were merely surveys made preparatory to actual plantations. I will call attention to this in a moment.

Coming back now to the 5th volume at page 79 is an extract which I read in another connection a moment ago. I shall not repeat it now, but I do desire to call the attention of the Tribunal to it, showing that, on the visit of Grovestins, there were no plantations about that river. At page 79 A and E, and then on page 81 E, we have the passages to which I called attention in connection with frontiers. At page 170 of this same volume we have a reference in relation to the year 1799, at C :

“ The Colonies of Demerary and Essequibo are cultivated from the boundaries of Berbice called Abary Creek, along the sea coast to Pomerony River, including the borders of Essequibo and Demerary Rivers, the islands in the mouth of Essequibo River, Mahaica, and Mahaycony Creeks, and several canals, which form an extent of 250 English miles.

The different plantations are cultivated, one with another, to the depth of 800 or 1 000 roods; between there are public roads, 30 or 40 feet broad, from one end of the Colony to the other. The interior of the country is all wood, more or less proper for cultivation, if canals were made, by which the rivers could communicate together as was intended to be done between Demerary River and Mahayca Creek, which would be sufficiently extensive for 300 sugar and coffee plantations. ”

And in this connection I might point out what I shall have occasion to refer to later when I come to deal with the interior, that the Dutch occupation was an occupation practically of the coast, not of the interior; and as the years went on and the 18th century drew to a close the colony moved further and further away from its original site at Kijkoveral and was comprised entirely within a very narrow strip along the coast itself. At page 176 of this same volume is an entry relating to the year 1802, the top of page 176. This is also from a memorial regarding the colonies of Essequibo and Demerara.

“ If one casts a glance upon the map, and examines the extent of the sea coast, one will find that from the Creek Abary (being the boundary between the Colony of Berbice and Demerara) to the River Pomeroon, which belongs to the Colony of Essequibo, that extent amounts to fully 25 hours' march, and constitutes a continuous row of plantations, which is only intersected by the intervening rivers and creeks; if at the same time one bears in mind that that entire series of cultivated grounds lies close to the sea — ”

that again emphasizes what I have just called attention —

“ where an enemy can at high tide always land with armed boats; and lastly, if one takes into consideration that wind and current are almost always toward the coast, and thereby make a landing still easier; then one will readily become aware of the *impossibility* of defending these colonies against a *foreign enemy*. For, assuming that entering the rivers may be made difficult to an enemy by strong fortresses placed within their mouths, and by a couple of frigates stationed before and near them, this would be a reason the more for the enemy to effect a landing along the coast, wherever it seemed to him most convenient, and to pene-

trate into the heart of the Colonies, *without troubling himself about the fortresses.* ”

There is another entry relating to the year 1808 which will be found at page 189 at the bottom of the page :

“ His Excellency laid before the Court an Address presented to him by several inhabitants of the part of the west coast of Essequibo comprehended between the lots Nos. 45 to 55 inclusive — ”

in this connection I will call attention to the map which explains where these were, it is Walker's map, page 34 of the British Atlas, and as we shall have to look at a number of these maps I take the liberty of asking the Tribunal to have the Atlas before them. This is the same Atlas that has been referred to by the Attorney General as proof of the cultivation to beyond the mouth of the Pomeroon :

“ His Excellency laid before the Court an Address presented to him by several inhabitants of the part of the west coast of Essequibo comprehended between the lots Nos. 45 to 55 inclusive — ”

the Tribunal will see those lots midway between the mouth of the Pomeroon and Capoe Creek —

containing an ample statement of the grievances and sufferings they are exposed to in their remote situation —

I call attention to those words —

from the seat of Government, in consequence of the depredations of Spanish privateers —

showing that even there they were not safe —

“ and from the want of roads to communicate by land with the other parts of the Colony. And the Governor further produced a Petition addressed to the court by a great number of planters of Essequibo relative to the same object, and being of the following tenour : ”

The particular points to which I desire to call attention in this connection are that these lots 45 to 55 were at that time regarded as being located in a remote situation from the centre of the colony.

Lord Russell. — From the seat of Government.

Mr Mallet-Prevost. — From the seat of Government; of course there were nothing but plantations and the seat of Government was still at that time in Fort Island.

Mr Justice Brewer. — Was it not in Demerara in 1808?

Mr Mallet-Prevost. — I do not at this moment recall the year that it was transferred from Essequibo to Demerara; but it is significant that these lots are considered remote without the allegation is presented that Barima, which was 155 or 160 miles further, was something that was within the ordinary control and jurisdiction of the Essequibo colony.

The President. — Will you explain on the map 34 this : There is written on the right the boundary between the Spanish.

Mr Mallet-Prevost. — That is again a question of claim which, with your permission, I will defer and treat by itself. It will conduce to brevity and clearness.

Lord Russell. — It involves going over the same ground, again and again, in another relation.

Mr Mallet-Prevost. — I have taken care in the notes I have prepared to avoid that. It will necessitate my referring to incidents over and over again, but I shall only take up the time of the Tribunal by reading the evidence once and I think it will be conducive to clearness and brevity if I am allowed to deal with the question of claim and dominion by itself.

Lord Russell. — You say that the settlement had not extended beyond these points, yet that the claim had extended much further.

Mr Mallet-Prevost. — Yes ; the claim had extended further, it was extended by Gravesande.

Lord Russell. — The reference at page 170 shows — am I not right? — the Government were purporting to sell land far north of this point.

Mr Mallet-Prevost. — It would have been if the petition was acceded to.

Lord Russell. — No ; between D and E on page 170 I allude to :

“ The land not yet cultivated on the sea coast extends itself from the west coast of Essequibo, where the district of Pomerony begins, to the Spanish Settlements in Orinoco River. ”

Mr Mallet-Prevost. — That is a claim undoubtedly.

Lord Russell. —

“ That land is esteemed as extremely rich, and a lot of uncultivated ground is sold now for 10,000 guilders : from thence an estimation of its value may be made when cultivated, ”

and so on ; so that they were purporting, rightly or wrongly, to deal with that land in that region.

Mr Mallet-Prevost. — It would seem so from this passage, but as a matter of fact they never did make any grants there whatever.

Lord Russell. — This would seem to show they did.

Mr Mallet-Prevost. — This is a report from the British records without signature, but understood to be that of Captain Macrae.

Lord Russell. — If it is good for one purpose it is for another. It says a lot of uncultivated land now is sold for 10,000 guilders.

Mr Mallet-Prevost.

“ The land not yet cultivated on the sea coast extends itself from the west coast of Essequibo, where the district of Pomerony begins, to the Spanish Settlements. ”

And that land is extremely rich. Will your Lordship remember that in the year 1799, from the extracts which I have read, cultivation extended, if my recollection serves me, to the creek of Oene. This might well therefore have reference to the land which lay between Oene and the Pomeroon along this strip which undoubtedly was very valuable.

Lord Justice Collins. — A little higher up in the same letter, it says :

“ The Colonies of Demerary and Essequibo are cultivated from the boundaries of Berbice, called Abary Creek, along the sea coast to Pomerony River. ”

Mr Mallet-Prevost. — And here we have a map of the year 1798 which is the year previous, and which shows exactly what the cultivation was.

Lord Justice Collins. — I take this document itself which puts the Pomerony River as a limit of the land he says is then cultivated.

Mr Mallet-Prevost. — He must have had reference to the map of the colony which showed that.

Lord Russell. — Whether right or wrong it seems to be clear he treats up to the Pomeroon as cultivated land and then says; beyond that there is rich land between that and the Orinoco, and he says there is one lot which sold for 10,000 guilders.

Mr Mallet-Prevost. — The language bears that construction, but if we take into consideration the facts as shown by the maps of that period we must interpret his language to be in keeping with those facts. In 1799 when he wrote and made this report he must have had before him this map of 1798 and it is not unlikely he may have fallen into the error that the Attorney General for Great Britain has fallen into here when in opening his speech he presented this map as proof of the fact that cultivation had gone beyond the Pomeroon and up to the Moruca. This map shows which of these tracts were cultivated.

Sir Richard Webster. — So I stated.

Mr Mallet-Prevost. — In the part of the map which lies near the crease, is a list of these lots numbered and the names are opposite the numbers. There are certain names opposite the numbers indicating the owners of those lots.

Sir Richard Webster. — So I stated when calling attention to the map.

Mr Mallet-Prevost. — If you did you certainly made the statement and based it upon this map, that cultivation had extended to the mouth of the Moruca river and beyond the Pomeroon and it is in connection with

that statement I have now to say this map does not bear it out; and I have to say it is very easy for Macrae to have fallen into this same error and it is perfectly clear that it had not gone into that point.

Mr Justice Brewer. — It was all surveyed.

Mr Mallet-Prevost. — Yes; and this subsequent map shows the survey. I think I had got to page 189 and now I will read from page 190 of this report an extract from the minutes of the proceedings of the Court of Policy.

“ Cut off from all communication with the more populous part of the Colony, we feel at this critical juncture every inconvenience and distress : from the peculiar nature of our situation, deprived of the only means to provide our negroes with food (by the capture of almost every boat in the quarter by the enemy), we look forward to little less than a total annihilation of our property from the death of our negroes, which must inevitably occur from the almost impossibility in many situations of procuring plantains for them; independent of this, we are daily threatened by the enemy to land upon the estates, which from their peculiar situation and consequent difficulty of communicating with the rest of the plantations (for want of a public road) would preclude the possibility of being able to collect sufficient force to repel the enemy before their object was fully obtained, as has already been manifested in some recent instances, where the Spaniards have come on shore and taken off several negroes, from which successful attempts they will no doubt become more daring, and we have every reason to apprehend the consequences.

Your petitioners thus impressed beg leave to lay before your Honourable Court our distressed situation, and to point out what, in our opinion, will be the most effectual measure of relieving us, and preventing the future depredations of the enemy. Two or three small military posts at particular points would be a great protection, and an armed schooner with a launch (similar to those the enemy have so successfully employed) stationed at the Post of Morrocco, where they could put out at a moment's warning, would intercept everything that passed up or down.

Your petitioners therefore humbly hope that you will take the foregoing statement of facts into your serious consideration, and to impress upon our minds the pleasing conviction that, although far removed from the seat of Government, we participate in its protection and encouragement. ”

It seems to me this is a most significant statement by witnesses, than whom none could be better qualified, as to the remoteness of this part of the colony from the central authority.

Lord Justice Collins. — I notice a good many of these are beyond 44 and 45, we have 95, 79, 76, and a number of others.

Mr Mallet-Prevost. — Yes, none of them beyond the mouth of the Pomeroon.

Lord Justice Collins. — My note was that it was 44 and 45 that are regarded in a remote situation.

Mr Mallet-Prevost. — The same must be applied to all, because all those who sign refer to their own position as being far removed from the seat of government. Of course if 45 is far removed the others must be very much further. At the bottom of page 190.

“ After the reading of the foregoing Petition the members observed that, although they sincerely sympathized with the distressed situation of the petitioners, it appeared to the members that the Court, by the purchase of armed vessels for the special purpose of protecting the properties of the said petitioners, had already exhausted all the means in its power to afford them relief, and that, with respect to the establishment of public roads, however desirable this might be, it would be impossible to expect that public roads could be made, or, if established, properly kept up, as long as so many lots of land in that part of the Colony continued ungranted by the Sovereign. The Court, however, requested that his Excellency the Governor would be pleased to transmit copies of the foregoing petitions to His Majesty's Government in support of the representations already made or yet to be made by his Excellency on the subject of the necessity of a competent naval protection to guard the coast of this Colony, and also to request, under the peculiar circumstances of that coast, that His Majesty would be graciously pleased to grant some of the vacant lots of land, or to order them to be sold for the purpose of providing for the expense of making and keeping up the public roads that are so highly necessary in that quarter. ”

Lord Justice Collins. — In that connection I find 95 extends beyond the Pomeroon, and that was an actual occupation at that time. Look also at 41. 95 is the third from the end.

Mr Mallet-Prevost. — And hence on the East of the Pomeroon.

Lord Justice Collins. — Certainly.

Mr Mallet-Prevost. — That is to say does not extend to the Pomeroon.

Lord Justice Collins. — One end is.

Mr Mallet-Prevost. — I meant the mouth of the Pomeroon, I did not mean the interior.

I was putting an extreme point on the coast.

Lord Justice Collins. — It is the extreme right of the map on the north side of the Pomeroon and it is within three of the corner.

Mr Mallet-Prevost. — Yes, the rear of that lot certainly goes on the Pomeroon as do a great many of those that are there, but the point I was endeavoring to make was the point on the coast which was most remote was on the Essequibo side of the Pomeroon. That is a narrow strip of land, the lots going from the coast to the river, but none of them crossed the Pomeroon.

Lord Justice Collins. — That shows some of those coloured pink, and not green, were in actual occupation?

Mr Mallet-Prevost. — I do not think I stated the contrary.

Lord Justice Collins. — It may have been my mistake.

Mr Mallet-Prevost. — Now, there is one more statement in connection with the year 1810, to which I shall call attention, at page 193.

Lord Russell. — Would this map appear to show, at all events, plots had been laid out whether occupied or not?

Mr Mallet-Prevost. — I so stated they had been surveyed.

Lord Justice Collins. — He found two occupied on the other side; 11 and 12 are on the other side of the Pomeroon.

Mr Mallet-Prevost. — And there is an 11 and 12 down by the Essequibo.

Lord Justice Collins. — They would not call those on the mouth of the Essequibo “in this remote part”. There is 11 and 12, half of 16 and 34.

Mr Mallet-Prevost. — They say No 45 is remote. I think my evidence is as good as your Lordship’s on that point. I say it with all respect.

Lord Justice Collins. — Where did you say the other 11 and 12 are?

Mr Mallet-Prevost. — If your Lordship will permit me to show you.

Lord Justice Collins. — Certainly. (Mr Mallet-Prevost pointed it out).

Mr Mallet-Prevost. — At page 193 we have an extract from the minutes of the Court of Policy. This is in 1810.

“ The undersigned Commandeur of Essequibo, has the honour to state to this Honourable Court in regard to a Petition signed and presented by a number of inhabitants of the west sea coast of that Colony, requesting that a public road may be made through the ungranted lots situated on that coast, and which Petition was referred to him, the Undersigned, by decree of this Court, dated the 2nd November, 1809.

That in order to comply, as much as possible, with your Honourable Court’s desire, the Undersigned has repaired personally to the said coast, and taken ocular inspection of the situation of that part of the Colony by which means he is now enabled to give a full explanation in the subject of the aforesaid Petition.

The inconvenience the planters labour under in having no road of communication, is sufficiently obvious, and requires therefore no further comment, but the expense of making such road as requested by the planters even by making it not farther than to N^o 5 will not amount to less than from 15 to 1,600 fr. independent of what shall be required annually for keeping the same in good order. ”

Of course that N^o 5 relates to the region very close down to Capoey Creek.

“ Your Excellency and the Honourable Court will perceive, in the chart annexed to this Report, that there are sixteen lots actually in bush from N^o 17 to N^o 50, to which a new dam must be made, and that land having never been cultivated (although part of the bush was burnt down in the year 1805, which will in some degree facilitate the labour), the dam or road to be made through it must necessarily be much higher than on settled lots, not only because the ground must consolidate itself, but also on account of those new lots having no drainage of the bush water, the quantity thereof in the rainy season would submerge the road and render it useless, if not made very high, all which will cause an increase of expenses. »

Further down opposite D.

“ Your Excellency and Honourable Court will be pleased further to observe in the chart, that if the road runs as far as No 50, the whole of the inhabitants on the coast will derive nearly the same benefit from it as if it was made through the whole extent of the same, because a channel has been dug by the proprietors of No. 48 and No. 49 up to Pomeroon River — ”

that of course is into the interior as pointed out by Lord Justice Collins —

“ to which place the planters, living lower down, can at any time come up with small rafts with the greatest ease, as they all drain their estates in that river, and therefore have cultivated their land adjoining the same.

However expensive the making of such road may prove to be, the Undersigned cannot avoid taking the liberty of strongly recommending it to the serious consideration of this Honourable Court, as the planters there are really discouraged in their almost abandoned state, and as there are several settlements of consequence, and they pay the same taxes to the Colony as other planters do, they do not appear to be less entitled to the same protection, comfort, and benefit as the old settlers. ”

That, Mr President, was the condition of things in the year 1810.

Lord Justice Collins. — I do not find the road marked on this map.

Mr Mallet-Prevost. — It was a projected road, not made.

Lord Justice Collins. — If you look at this petition; as to some of the plantations there was no road behind them at all, and as to others there was a road, and they distinguished the two as being the planters of the west sea coast of Essequibo although not immediately labouring under the inconvenience of want of roads. All those have roads; the others have none, and if you look in the category of those that have no roads you will find the ones I referred to before, embracing 12 and 11 and it looks to me as if it were quite possible the other duplicated numbers which are close to the Essequibo came within the category of those that had roads. You see the petition is signed by two different persons, some who say they cannot make the absence of roads a grievance to us, and we sign in a different category, and others say they are, and others regard their place in a different view, and those I referred to are to be found in places they say they have no roads. If that is so you have the plantations on both sides of the Pomeroon.

Mr Mallet-Prevost. — If that is so, that is the only evidence in this case, and I should be inclined to doubt if that construction was a true construction to place upon this.

Lord Justice Collins. — There is a distinction made between those that have a road behind them and those that have not, obviously.

Mr Mallet-Prevost. — Whatever may have been the fact as to that road and the extent of these plantations here, we have a picture which is very vivid as to the condition of things in the year 1810 — a condition of things which existed right on to the time when the colony was formally transferred under the Treaty of London in 1814.

Lord Russell. — The state of things you suggest was practically the same in 1814?

Mr Mallet-Prevost. — Yes, the state of things was practically the same in 1814.

Lord Russell. — Now, let me in that connection put this: what do you suggest at that time, 1810, were the visible existing signs of occupation or dominion or control on the part of Spain or Venezuela in the disputed districts except the establishment at Santo Thomé and the missions. Were there any?

Mr Mallet-Prevost. — At that time Spain had a post at the island — Pagayos Island — an island in the river itself.

Lord Russell. — That is not in dispute.

Mr Mallet-Prevost. — You asked me what was the visible sign of occupation. I should say if that was on an island or not it is near this district.

Lord Russell. — I do not object to your pointing that out. On the contrary, I am glad you do. I mean on the territory in dispute.

Mr Mallet-Prevost. — From Moruca to Point Barima?

Lord Russell. — From Orinoco to the Essequibo.

Mr Mallet-Prevost. — There was never at any time as far as I know, speaking on the knowledge of the evidence of the case, at any time, between Point Barima and this point, a Dutch settlement or Dutch post of any kind, or Dutch post or Spanish post.

Lord Russell. — I would like once in a while to get an answer.

Mr Mallet-Prevost. — I answer by saying no Spanish or Dutch.

Lord Russell. — There was no visible evidence of political control?

Mr Mallet-Prevost. — No; you are enlarging upon my words. There is very strong evidence of expedition after expedition sent in, to drive out the Dutch, from Essequibo and Surinam, French, English and Spanish. There is expedition after expedition. I understood your Lordship to ask if there was any evidence of *settlement* in that region and I said there was not.

Lord Russell. — My question was more comprehensive. I mentioned occupation, dominion or political control.

Mr Mallet-Prevost. — There is great evidence of political control on the part of Spain.

Lord Russell. — As regards occupation and possession — none?

Mr Mallet-Prevost. — No, but as regards political control right up to the Moruca.

Lord Russell. — You will deal with that by and by?

Mr Mallet-Prevost. — And show that it went right up to the Moruca.

Lord Justice Collins. — And where did it start from?

Mr Mallet-Prevost. — From the Orinoco.

Lord Justice Collins. — Where on the Orinoco? Where was the centre from which it was exercised?

Mr Mallet-Prevost. — The expeditions were always or generally sent from Santo Thomé. I was trying to recall if any started from Trinidad.

Lord Justice Collins. — What was the maximum European population of Santo Thomé at this time — 60?

Mr Mallet-Prevost. — At times more. We have been utterly misrepresented in that regard and the position has been put before the Tribunal in a very unfortunate light. We have been put as having a few soldiers. No account has been taken of the Spanish strength.

Lord Justice Collins. — That is the object of my question. What was the source from which the Spanish control came. You say Santo Thomé?

Mr Mallet-Prevost. — From which they started as a base. It was not the only source of strength. There were expeditions sent from other places to Santo Thomé. Santo Thomé was made the base. When many individuals were arrested in this district, expeditions were sent from Santo Thomé, but I do not want to limit myself or to be understood as doing so, in saying that Santo Thomé was the only point from which any control was here exercised. The whole strength of Spain, whatever it was, was at the back of Santo Thomé, and was on occasions called for.

Lord Justice Collins. — I should like to have some idea when you trace them, what they were. If you put two or three more Santo Thomés there — within a hundred miles from Santo Thomé you do not much multiply the means of aggression, but if you have populous places and a government, — then it does.

Mr Mallet-Prevost. — In that connection it will give me pleasure to point out what Essequibo was. If we had only 60 at Santo Thomé, I will show they had only a dozen at Essequibo.

Lord Justice Collins. — You said several times there was a large reserve of Spanish power behind Santo Thomé. I should like to see it sometimes in a concrete shape.

Mr Mallet-Prevost. — Yes, at this time one expedition occurs to me. That is the expedition under Iturriaga, when the Dutch, that came back, spoke of the place as swarming with boats and soldiers. That was an expedition sent by Spain — a very large expedition.

Lord Russell. — But if you are going to deal with this it is not fair to ask you to interject a sentence now.

Mr Mallet-Prevost. — I shall be glad to deal with it as a separate subject.

Lord Russell. — If you can deal with it and get rid of it, well and good.

Mr Mallet-Prevost. — I prefer to deal with it as a separate subject if I may be allowed to do so. I do not want to seem to avoid this. There are other maps I should like to appear on record so that the Tribunal may appeal to them if the Arbitrators so desire in connection with this question of the actual occupation. The first is a map of Maas in 1706.

Lord Russell. — What is this?

Mr Mallet-Prevost. — In connection with the subject as to the extent of Dutch actual settlement and occupation along the Arabian coast or from the Essequibo River. Maas is 59 in the Atlas to the Venezuelan Case. There is a map, Storm van s'Gravesande, 17 in the British Atlas, in 1748. There is a map of Siraut-Destouches, in 1779, in the Venezuelan Atlas, page 66. Another of Siraut-Destouches, page 67 of the Venezuelan Atlas and which relates to the year 1780. Another of Chollet, page 69, in the Venezuelan atlas, in 1794, and another of Bouchenoeder in the British atlas No 35.

I turn now, Mr President, to the question of the alleged settlement in the coast region north and west of the wide savannah, which separates the Pomeroon and the Moruca on the one hand from the Waini and the other rivers on the other.

The President. — Will you be kind enough to show it on the map?

Mr Mallet-Prevost. — The first region was what I have called the Pomeroon — Moruca region; that is to say, the Dutch posts that were about these rivers, the extension of Dutch plantations towards those rivers, from Essequibo, a region I shall not attempt to define by metes

and bounds in the direction of Essequibo, but which in the direction of Orinoco was entirely cut off by the wide savannah which I described the other day as forming a barrier between the Moruca and the Pomeroon on the one hand, from the Waini and the other western rivers on the other.

Now I am about to deal with the question of occupation and the region which lies between this same barrier and the main stream of the Orinoco; that is to say with occupation in Waini, in Barima, in Moruca and in other places thereabouts. There are one or two references to the Aguirre, but generally in what, rightly or wrongly, I have called the Orinoco delta region of the territory in dispute.

The President. — Will you draw a line which will show that?

Mr Mallet-Prevost. — The Imataca completely divides the coast region from the interior.

The President. — From the sea-coast to the Imataca?

Mr Mallet-Prevost. — From the sea-coast to the Imataca.

Mr Justice Brewer. — Do you propose to limit yourself to the alleged matter of settlement and occupation or including in it political control and exercise of dominion?

Mr Mallet-Prevost. — I propose to deal with that in this way. In the first place, certain allegations, general and specific, have been made with regard to Dutch occupation and settlement. I shall first deal with all the evidence on that subject and in doing so I shall touch on the questions of trade and political control and I do not intend to repeat what I may say in that connection under the head of settlement. I propose to deal first with the question of Dutch settlement. In the next place with the trade by itself, showing what the trade in this region was.

There are also certain allegations as to the fishing rights in this region by the Dutch, and certain rights of timber cutting, and finally I propose to deal with the general subject of Spanish control of this entire region. When I come to deal with that it will involve a good deal I have said under the other heads, but as I have assured the Tribunal it is not my purpose to repeat myself. I will try when I reach other incidents to deal with them fully and when I have dealt with trade and settlement and the question of control of this region then I shall state to the Tribunal what there is upon the question of settlement by the Dutch as within Dutch territory. It will be touched upon in the question of settlement, of trade, and control but I can sum it up very briefly and point out what the settlements were. I do not know if I have fully answered the question that was put to me.

Lord Russell. — I should like to understand. You are now dealing with questions of Dutch occupation, settlement and control in the region between the sea-coast and the Imataca Mountains from the Pomeroon to the Orinoco, is that so?

Mr Mallet-Prevost. — Purely questions of alleged Dutch settlement, of alleged Dutch occupation. I do not know whether I make myself clear,

but it seems to me if we take up the question of settlement first, then the question of control and distance between, those three things. I think it will help to a proper understanding of the Case.

Lord Russell. — I should have thought myself, but you have thought it out, that those three run in and out of one another and form part of the same bundle of sticks.

Mr Mallet-Prevost. — I do not intend to say that they will be completely separated that there will be no connection between them; on the contrary, as I stated in dealing with questions of alleged occupation and settlement, the others will come in and I shall not repeat myself when I come to those, but I think some distinct advantage is to be gained by treating each one of these separately. First, as to the alleged Dutch settlement between the Pomeroon and Moruca in this region. There are certain allegations made in the British Case and Counter-Case, at pages 78 and 176 and 115, which it is not necessary for me to read, and there are certain general claims made in that behalf by others. Schomburgk made this claim which is a general one. I do not trouble the Tribunal to turn to the volume; it is the seventh volume, Appendix to the British Case, page 33, at B :

“ The River Amacura enters the Orinoco $4\frac{1}{4}$ geographical miles from the eastern point of the River Barima, on both banks of which the Dutch are said to have possessed settlements, and having forgone to claim, according to modern English geographers, the Canno Coyuni as a continuation of the western limit, the Venezuelans, if they recognise the British right of possession to the Barima, will easily reconcile themselves to see a permanent boundary established, by selecting the River Amacura. ”

These general claims of course could only be tested by specific claims that may be made in their support and in this connection there are certain specific claims with all of which I shall deal, the first of which I shall dispose of very summarily; it is a claim which relates to the very early period, from 1648 to 1666, and is presented by Schomburgk in the seventh volume of the Appendix to the British Case, page 4 D :

“ The Dutch, when in possession of the Colony, extended their sugar and cotton plantations beyond the River Pomeroon. They recognized, neither the mouth of the River Pomeroon nor that of the Moroco, where a military fort was established as the limits of their territory.

They had even occupation of the eastern banks of the small River Barima (before the English, in 1666, had destroyed the fort of New Zealand, or New Middleburg), which military outpost they considered to be their western boundary. ”

Of course there was no such occupation in 1661 or prior to that.

Schomburgk was here confounding with the Barima the Pomeroon. As the Attorney General has properly pointed out the names of those two rivers are written in a great variety of ways and Schomburgk was undoubtedly misled by some statement which he saw which related to the colony which I have already dealt with on the Pomeroon. He attributed that to an earlier date and instead of the Pomeroon assigned it to the Barima. There is no evidence in reference to his statement. The only reason I mention it now is because Schomburgk's claim in that regard was one on the basis of which Schomburgk laid down his line. I do not propose to discuss the line at this point but I do say that the Attorney General is utterly mistaken when he says that Schomburgk drew his line upon a basis of what in 1839, 1840 and 1841 was the actual British jurisdiction at that time.

Schomburgk did nothing of the kind. Schomburgk stated he drew it there because it was a Dutch claim and that the Dutch had occupied that region and he alleges these grounds in support of his contention, and it is only for that reason that it has any relevancy whatever in this investigation and also because of this fact that the British Government has been unfortunately misled by Schomburgk's erroneous statements. In the diplomatic correspondence which began at a very early date, owing to Schomburgk's misstatements these allegations of Schomburgk were put forward by the British Government, and it is upon those the British Government has founded this claim and it is because the British Government was influenced in believing Schomburgk it has been misled into taking a very erroneous position.

Lord Russell. — Is it conceded Schomburgk did make the mistake of confounding the Barima and Pomeroon?

Sir Richard Webster. — Certainly not. The language of the letter shows he did not.

Mr Mallet-Prevost. — If that is not conceded (I thought I could dispose of it in a moment) I will refer to some evidence; I did not suppose for a moment it was going to be seriously contended there was any truth in Schomburgk's statement.

Sir Richard Webster. — My case does not rest on that finding of Schomburgk. The question put to me was whether in that particular matter Schomburgk confounded the Pomeroon and Barima. I do not think he did.

Mr Mallet-Prevost. — Do I understand the Attorney General to say there was colony there in the Barima?

Sir Richard Webster. — I think there Schomburgk very likely referred to what occurred in 1637; what he referred to is before 1666, he does not refer to the date 1666.

Mr Mallet-Prevost. — Then I supposed that I could have passed this matter.

Sir Richard Webster. — I found no claim on the particular passage, you must not misrepresent me. I only answer a question.

Chief Justice Fuller. — It is a matter of importance to know if it is true or not. You will have to go into it.

Mr Mallet-Prevost. — Yes, I will have to go into it. If the Attorney General says there is foundation. I want to spare the time of the Court.

Lord Russell. — It may be important if that mistake has been made the foundation of a statement by Schomburgk for a claim by the Government which Schomburgk initiated; otherwise I do not see how it is important.

Sir Richard Webster. — I think it plain if we go into this that Schomburgk quoted from Humboldt and took his statement from it. I have not founded on this passage of Schomburgk in any part of my speech. — I referred to the personal observations of Schomburgk.

Mr Mallet-Prevost. — I supposed this thing was too palpable to need any explanation, but I must take up the time of the Court in view of what has been said. I call the attention of the Court to the seventh Appendix, British Case, page 32.

Sir Richard Webster. — I do not know if I can save trouble about it, I am most unwilling to interpose. I have not been drawn into this willingly; the actual words cited by Schomburgk are found at page 88 of the British extracts which it is plain he took from (it is a quotation from) Humboldt and it is ridiculous to call this a personal error of Schomburgk. Schomburgk cited Humboldt's words; if he is accurate or not we see the source of it.

Mr Mallet-Prevost. — May I ask the Attorney General here to support what Schomburgk said on that point. Was he right or wrong, I do not care for his authority, but was he right or wrong?

Sir Richard Webster. — He was perfectly right if he refers to the period of 1637.

Mr Mallet-Prevost. — Was he right as referring from 1637 to 1666.

Sir Richard Webster. — I do not think he says so. All he says is before 1666.

Mr Mallet-Prevost. — Now I read from page 32. “ By the Treaty of Münster — ”

Sir Richard Webster. — The passage you criticise is on page 4.

Mr Mallet-Prevost. — Now I have something to say in regard to that, and I call attention to a passage on page 32. This is a special report from Schomburgk to Governor Light, opposite A.

“ By the Treaty of Münster, on the 30th January, 1648, Philip the IV of Spain recognized the Netherlands as independent States, and confirmed their possessions in foreign parts.

This Treaty included especially the Colonies of the Dutch West India Company, and comprised, consequently, Guiana to the mouth of the Orinoco. It was about this time — ”

I call attention to the fact that Schomburgk was speaking of 1648 —

“It was about this time that the Dutch had a post at the mouth

of the River Barima; it was at least in existence when the English destroyed, in 1666, the Dutch settlements, Nieuw Zealand, and Nieuw Middleburg, at the Pomeroon. The former existence of this post is not doubted, and it does not appear from Hartsinck that it was merely a military occupation. He observes in his *Beschryving van Guiana*, vol. I, p. 257, "The first rivers which, on coming from the River Orinoco, we meet in Netherlands Guiana are the creeks or rivers of Baryma, about a mile wide, where we formerly had a post, three miles further the Amachora of the same width, which, like the former, has its outlet in the River Orinoco.

It is indisputable, from the records of the Dutch West India Company, that they directed their Governor at Guiana to construct and maintain a post on the Barima, and Colonel Moody, R.A., discovered the remains of this post in 1807, when he was employed as an Engineer officer in Demerara, and when it was in contemplation to send a small force against Angostura to destroy the privateers which infested the coast of Dutch Guiana."

There is a statement by Schomburgk, that there was a Post in the Barima and that it was in existence at least as late as 1666. At page 13 of this same volume

Lord Russell. — The authority there is Hartsinck.

Mr Mallet-Prevost. — Yes, Schomburgk was not speaking with the knowledge that we have now on the subject, and consequently he falls into a great many errors. Opposite C on page 13,

"In a memorial on the boundaries of British Guiana, which I had the honour to address to your Excellency, I observed that the Dutch, when in possession of these Colonies, were in actual occupation of the mouth of the Barima; and some merchants of Middleburg, subjects of the States-General, had a colony in that river."

Now I call attention there to what is perfectly palpable. The Middleburg colony was the colony that existed on the Pomeroon from 1658 to 1666. It was the Pomeroon colony that Schomburgk had in mind when he made this statement.

"And some merchants of Middleburg, subjects of the States General had a colony in that river. Colonel Moody, of the Royal Engineers, who was sent in the earlier part of this century to report on the military situation of the Orinoco, observed at the mouth of the Barima the remains of the former Post. I report this circumstance, as the site of our camp, at the mouth of the Barima, gave evident proofs that the ground had been under cultivation, and the environs showed vestiges of trenches.

I noted some straggling cassava plants, and a few shrubs of arnotto which does not grow wild on grounds subjected to tidal influences."

And yet these straggling cassava plants had remained there for two centuries, in a place constantly covered by the tides of the ocean.

Now I say this claim of Schomburgk gathers importance from the fact that it is repeated in the Diplomatic correspondence, and is put forward in a claim by the Earl of Aberdeen. The Earl of Aberdeen's claim in that regard will be found at page 90 of this same volume at the top of the page.

"But, in truth, there cannot be a doubt that not only was the mouth of the Orinoco always claimed by the Dutch as their western boundary, but that it was early in their actual possession, and under military occupation by them. Hartsinck says, the first rivers which, on coming from the River Orinoco, we meet in Dutch Guayana, are the creeks of Barima, about a mile wide, where we formerly had a post."

Now this is the statement of Lord Aberdeen and which is clearly based on Schomburgk's say so.

"And there are documents of the West Indian Company extant by which the Directors instructed the Commandant of Pomeroon to keep the fortified post of Barima in repair. The remains of these fortifications were found by Colonel Moody in 1807, during the occupation of the coast by the English, when it was in contemplation to send a force to Angostura to destroy the privateers which then infested the shores of Dutch Guayana, and to fortify the point anew; and distinct traces of the intrenchment and surrounding cultivation were seen by Mr Schomburgk when executing his late Commission."

Now this reference of Lord Aberdeen to a fortified Post in the Barima refers to one of two things; either the former statement of Schomburgk, as to settlement there, or to a Post at one time proposed, in 1683, by Beekman, Commandeur at Essequibo, and which was disapproved of by the Company. This statement that there was a Dutch Post in the Barima in the year 1666, Schomburgk's statement in that regard, is fully explained by the existence of the colony in the Pomeroon that was established in part by Middleburg merchants. We have evidence also to contradict it, and I refer the Tribunal to the first volume of the Appendix to the British Case at page 152 D. This is a statement in the year 1662.

"In five duplicates I have given your Majesty an account of the miserable state of this Government, and how harassed it is by the foreign nations, Dutch and English, which are settled on

this coast of Terra Firma in different places and sites which they have chosen for their greater convenience, the nearest called Vauruma [Pomeroon] and Moruga, being distant from this River Orinoco 25 leagues."

That is in the year 1662, and the nearest at that time was Moruca. Then we have the passage referring to the following year, 1663 found in the Appendix to the British Counter Case, where the Commandeur in Pomeroon made his visit to the Spanish Governor in Santo Thomé, and in passing along the Barima referred to it as a place where the lands were valuable and it might be well occupied; but those passages contradict the statement of Schomburgk and I am only sorry I should have to take up the time of the Tribunal with such a trivial matter.

Lord Justice Collins. — Do you notice in the passage of Hartsinck what he refers to there as Barima is the Amacura?

Mr Mallet-Prevost. — What page is that?

Lord Justice Collins. — I am not sure.

Lord Russell. — It is page 32 of the seventh volume, it is a passage that Schomburgk cites.

Mr Mallet-Prevost. —

“ Formerly had a post, three miles further the Amachora of the same width, which, like the former, has its outlet in the River Orinoco.”

Yes, the Post is stated to have been in the Barima.

Lord Russell. — At that time the positions, it was supposed, were different from what they are.

Mr Mallet-Prevost. — Hartsinck wrote at a very much later date; his statements were founded on very insufficient evidence, and as I shall show by reference to the documents themselves exactly what the position was in the rivers during all these years, a statement of a historian in 1770 I think in this regard can have very little weight. I call attention to the passages I have read as showing that in the year which Schomburgk stated a Post was still in existence at Barima that there was absolutely nothing there.

Lord Justice Collins. — As far as he founds upon the fact that that particular settlement was founded by merchants of Middleburg, it seems to me you have shown he is confounding Pomeroon with Barima; that is one factor, and it may be important in his view, but it is not the only one. Colonel Moody and the others are independent of that.

Mr Mallet-Prevost. — He makes the statement it was in existence in 1666.

Sir Richard Webster. — No, he does not say it anywhere.

Lord Justice Collins. — As to the date of its destruction and so on.

Mr Mallet-Prevost. — With regard to any remains in the Barima as we go through this part I shall call attention to one fact entirely over-

looked by the Attorney General; during the war of the Spanish Succession the French were in possession.

Sir Richard Webster. — I stated that, I think.

Lord Justice Collins. — I want to know how far that position is impaired by the blunder of Schomburgk, it does not go quite the whole length.

Chief Justice Fuller. — Did the French have a fort there?

Mr Mallet-Prevost. — I do not know what the fort amounted to.

Chief Justice Fuller. — Was it fortified?

Mr Mallet-Prevost. — Yes, they attacked the Spaniards there in 1684. It is in that year that Santo Thomé was attacked by the French; they were at war with Spain and subsequently, in 1688, the war became general. From 1688 on for some years the French were hostile to both the Dutch and the Spanish, but subsequently came the war of the Spanish Succession, and there is evidence that during those years the French continued to remain in the Barima; they were undoubtedly in military occupation of the Barima for a number of years.

Chief Justice Fuller. — My question was directed to this point whether they may have erected a fort which remained there, in other words if there were any remains of a fort in Barima which is it assumed were Dutch remains?

Mr Mallet-Prevost. — It is a pure assumption. We know the French were there subsequent to this alleged Schomburgk Dutch occupation, and if a fort was erected by the French that would answer completely any inference Schomburgk might draw from the existence of any remains there. I might call attention to the language used by the Earl of Aberdeen where he says there are documents of the West India Company extant by which the Directors directed the Commandeur to keep the fort in repair. If there are such documents they have not been presented in this case.

Lord Russell. — I rather think that is a suggestion made by Schomburgk at page 32.

Mr Mallet-Prevost. — Schomburgk did make it, but Lord Aberdeen says there are documents of the West India Company extant.

Lord Russell. — If he relied upon Schomburgk he might well have done so.

Mr Mallet-Prevost. — That is what he did. Schomburgk told him that and he believed it and therefore he put his Government in the position in which it is today.

Lord Russell. — That is going a long way.

Mr Mallet-Prevost. — It is a long stretch, but it is the result of the whole argument as will be shown before we get through. I want to take up this statement as to a post on Barima, it is put forward by the British Case at page 13 :

“ The Essequibo Government thenceforward continued to

control the district of the Pomeroon, and of the rivers and creeks connected with it, including the Barima. Servants of the Company were residing in Barima and in Pomeroon in the year 1683. ”

Of course that has reference to some date that Lord Aberdeen says there were instructions from the Company to fortify this post. Now what are the facts in regard to that? The first document to which I call attention is in the second volume of the Venezuelan Case, page 45.

“ Pomeroon begins annually to furnish much and good annatto, and much was brought from Barima, as appears from the inclosed list under No 7, from which you see how much has been got by barter here at the fort as well as by all the outliers. But Gabriel Biscop and other sea-rovers from Surinam not only spoil that trade, but buy up all the letter wood, which is there fairly abundant and good, together with the carap-oil and hammocks, as a result of which I have obtained this year only very few old and bad ones; they traverse and overrun the land even into the River Cuyuni. In order somewhat to check this, I have caused a small shelter to be made in Barima, and Abraham Baudardt who is stationed there — ”

“ *there* ” means Pomeroon, I think admitted by both sides —

“ who is stationed in Pomeroon as outlier in place of Daniel Galle, who is going home, shall occasionally visit that place — ”

that is Barima —

“ and encourage the Caribs to the trade in annatto and letter-wood, which even the French from the islands frequently come and carry off with their vessels. It would therefore, if I may suggest, not be amiss if the West India Company, in order to obtain the aforesaid trade, should take that River Barima into possession, and should establish there a permanent outlier ship. ”

I shall have to refer to this passage in connection with the subject of trade, and to show that whatever trade was carried on by the Essequibo Dutch in the Pomeroon was not an exclusive trade; it was carried on by French, English, and Surinam and Berbice Dutch, and I shall point out this important fact, that no rights have accrued or can accrue to Great Britain by reason of any occupation or trade or acts of this kind done by the Dutch in Surinam or Berbice, which were distinct colonies.

Sir Richard Webster. — I think you meant the passage at the top of the page “ I have had one of the Company’s servants...”

Mr Mallet-Prevost. —

“ In Barima I have had one of the Company's servants take up his abode, since there is much annatto and letter-wood there and it is close by Pomeroon. Recently too, it has been navigated as many as two or three times by Gabriel Biscop and exploited with great success. ”

Sir Richard Webster. — You gave 1683, that refers to 1683, the other refers to 1684.

Mr Mallet-Prevost. — I am obliged to you, it makes it clear :

“ Recently, too, it has been navigated as many as two or three times by Gabriel Biscop and exploited with great success, much to the prejudice of the Company. I hope this will meet your approval. That trade, both there and in Pomeroon, I have forbidden to him, and to all others as well. I wish you would take that river also into your possession, as has provisionally been done by me, in order to see what revenues it will yield, since I am of opinion that the Company can do as good a trade there in an open river as can private individuals. ”

I am obliged to the Attorney General for not allowing me to overlook that passage. Now what was the answer of the Company? It will be found at page 48 of this same volume, and though it is long I shall have to read most of it as it is important. Volume 2 of the Venezuelan Case Appendix. This shows largely the condition of the Essequibo Colony at this time also :

“ Dear Sir, The ship Abram and Isaac being ready to leave for Berbice, we have resolved to send you this missive from our Chamber. In the first place we inform you that on June 9, 1684, there arrived here the ship Westsouburg, skipper Steven Keuvel, whereby you send us to the Company's account 157 barrels annatto dye, 87 pieces letter-wood, 895 Spanish shillings, in part bad light coin, 88 barrels sugar, all of which we have received in good condition. From your preceding letters we had expected a rather large consignment of sugar. You must see to it in future that private persons no longer get ahead of us, ...aye, even make twice as much as does the Company, as we saw and learnt the last time, though in the number of their mills, slaves and horses they cannot compare with the Company. You tell us of having bought from one Jacob de Jonge — ”

he was subsequently the Commandeur of the Pomeroon colony that existed from 1686 to 1689 —

“ you tell us of having bought from Jacob de Jonge a plan-

tation worth 1,400 guilders in view of his inability to pay for 6 Elmina slaves whom he had bought some time ago, and that in addition you had placed on this plantation four slaves which were bought by one Michiel Gangel, namely ”

and so on.

Then lower down.

“ In reply to this we say that all these ways of doing seem very strange to us, and that we can clearly perceive therefrom that you play there quite the part of sovereign lord and master, buying a poor and ill appointed plantation for 1400 guilders, appointing and dismissing people, raising salaries, all according to your own whim; thus putting the colony to heavy costs, without our order or knowledge. You know you wrote us last time that you had engaged said Samuel Beekman at a salary of 20 florins per month, to which at that time we had reason to give our approval. Now you put him [as said above] on a salary of 20 to 24 florins per month, with the title of director, and this on your own authority, and not only relieve Jacob de Jonge of his debt by buying from him his plantation for 1400 florins, but moreover advance him to sergeant at 18 florins per month, all of which we as yet in no way approve. Why did you not act in this matter subject to our approval, as you write you have done in the making of a contract with the surgeon Jean de Bruel for treating slaves at such a salary as we might name for him — which we hereby do, fixing it at — florins per month. On condition, that he treat only the Company's slaves; if private planters also wish to have his services, they must have private arrangements with him, and not otherwise. We next ask whether the Company's surgeon there, Jacobus den Erffer by name, cannot as well be employed thereto as this Jean de Bruel; or, if he be worthless or unfit, he might as well come home, for the Company does not need to bear the burden of two surgeons in so small a colony, from which little if any profit is received. You send us a sketch-plan for the building of a new fort on Stamper's Island — ”

Lord Russell. — Where is that?

Mr Mallet-Prevost. — Quite near the mouth of the Essequibo.

Lord Russell. — That is quite enough.

Mr Mallet-Prevost. — Beekman had been doing a lot of things on his own authority that is perfectly clear —

“ You send us a sketch-plan for the building of a new fort on Stamper's Island. ”

Lord Russell. — This is a scolding letter.

Mr Mallet-Prevost. — Yes; thoroughly.

Lord Justice Collins. — But nothing about Barima in it.

Mr Mallet-Prevost. — Except this phrase at the top of page 50; and if they deign to take any notice of what he says as to Barima this is the only way they deign to do it : “ concerning the trade to Orinoco ” — and his proposed shelter in Barima had been in that direction. —

“ Concerning the trade to Orinoco we find it advisable that you stop it, and neither trade thither yourself, nor permit trade thither, directly or indirectly, until further orders : since we are of opinion that the Company bears all the expense and burdens, and that others help themselves to the profits. ”

I should think that that would be enough to make Beekman, if he had put any postholder in Barima, to have him removed; but the fact remains that the records of the Dutch West India Company, which give a list of the postholders, never once mention a postholder in Barima, and it is perfectly clear that this putting up a shelter there and having the Pomeroon postholder go there from time to time in 1683 and 1684 was something undertaken by Beekman without authority from the Company, and when he applied to them for authority they refused it. If this is applicable to that they simply overlooked it, and scolded him for having done things he had no authority to do.

Lord Russell. — They seem to have stuck to Barima more or less.

Mr Mallet-Prevost. — I am going to go right through the Barima history, but nothing more is ever heard in the records of the Company of this proposed shelter. The Pomeroon Colony about which I spoke the other day was established only two years later, in 1686.

Lord Russell. — The document I refer to is 1685 at the bottom of page 52.

“ Of Orinoco the Spaniards again have possession. The dispersed and expelled Coppenam Caribs are taking refuge just to leeward of us about Barima, Waini, Amacura. ”

Mr Mallet-Prevost. — Yes; will your Lordship continue?

“ They often alarm this coast, sometimes slaying some unlucky Arawaks or Christians as was seen in the case of Biscop and the men from Berbice, of which I have already apprised you. ”

I do not suppose my learned friend will cite that passage in proof of Dutch control at Barima.

Sir Richard Webster. — We did cite it.

Mr Mallet-Prevost. — It shows to what straits our friends are put, that is all.

Chief Justice Fuller. — On page 52, No 51 is Abraham's answer to the Company :

“ That you stop the Orinoco trade is a good thing; that business has always brought in much glory and little gain, as will be seen from the declaration of Peter Laman and Matthijs Bergenaar sent with the documents above named. The expenses which you bore were small, and no one to my knowledge helped himself to the profits. You still have there as much as 80 dollars to your credit. The French in the Barima — ”

Mr Mallet-Prevost. — I was just going to refer to that, Chief Justice.

“ The French in the Barima likewise come even to the Upper Cuyuni to get them. ”

As I stated a few moments ago the French attack was in 1684. This is a passage I had in mind showing the French were in the Barima there and continued there for many years.

Lord Russell. — What was the point of strength, the focus point of the French, along the coast in this connection. Where did they come from?

Mr Mallet-Prevost. — I think from the Island of Martinique.

Chief Justice Fuller. — Somewhere the Governor of Martinique issued some letter or Proclamation as being the Governor of the whole coast from the Amazon to the Orinoco.

Mr Mallet-Prevost. — I have not that in mind.

Mr Justice Brewer. — Barima was where they landed.

Mr Mallet-Prevost. — Yes; and were in occupation of it for some years, and that is some evidence I cite that the Dutch shelter amounted to nothing; the French went there in 1684 and were there for years. In 1686 the Pomeroon colony was founded by de Jonge, and it was destroyed by the French from Barima assisted by the Caribs. During its existence de Jonge was at odds with Beekman from Essequibo, who had nothing of course to do with Barima. In the records of that colony of Pomeroon the word Barima never occurs.

Mr Justice Brewer. — You do not suggest the French had a village there.

Mr Mallet-Prevost. — No, it was a hostile occupation, just as the Dutch had in 1637.

(Adjourned for a short time.)

The President. — Mr Mallet-Prevost, before you continue your argument will you allow me to suggest to you quite a personal observation which concerns not only yourself but all the counsel for both parties. There is no doubt that the liberty of defending the rights of both parties is quite absolute, and that both parties, through their counsel, can speak as long as they like and as much as they like. About that there can be no doubt in the least. But in my opinion with regard to the different facts and documents (the number of which is now 2635 as far as I remember)

which are submitted to the Tribunal, the opinions of counsel of both parties and the members of the Tribunal may be very different. Still, as between the members of the Tribunal and the counsel one aim is quite common and general to us, which is that we all wish to bring sufficient light on those facts and documents to get at the truth. That is the end which we have in view, and I think from that point of view it is our general common interest to bring light upon them as quickly as possible to get to the truth in the way which will be the shortest. I have not the right nor the intention to submit any means to get to this truth but as the French say "All roads lead to Rome". Now we can get to Rome via St. Petersburg, Moscow and Odessa or we can get there by Vienna and Buda-Pesth or go directly to Rome, and from this point of view I would only submit to you in regard to what we were told this morning in answer to some question put to you that you will treat first with the question of occupation or settlement and then of trade and then of political control, my personal opinion which has no obligatory force upon you of course is — that perhaps it would be possible to explain these different points together. It seems to me, speaking of settlement, it would be very difficult not to have regard to trade; that speaking of trade it would be impossible not to remember if there has been some occupation or political control, and from this point of view taking these questions together and bringing all sorts of documents to which you will have to refer before us, it seems to me that the Tribunal will get very soon a general aspect of the whole question which you will put before them. But if every different point is to be treated separately we shall be obliged to have it repeated and to come again to the same document and the same facts. I suggest to you my personal opinion in view of our general object and aim, which is to get at the truth in the shortest way possible, that perhaps you will find my opinion has some value from the point of view of general interest, viz: to get in the shortest way to the truth, which is the purpose for which we are all searching together with all our lights and capacities. I simply repeat that that is only my personal opinion on the suggestion which I submit to you and it quite depends on you to follow it or not.

Mr Mallet-Prevost. — I hardly know Mr President what to say in answer to the suggestion that you have been good enough to make but I am frank to say that it puts me in a very embarrassing position. There is a great mass of facts and a great mass of documents as you have just pointed out. I don't pretend to say for one moment that my way of looking at this or presenting the case is the best way. I can only say that it is my way and if I am to be of any assistance to this Tribunal, if I am to present the facts as I think that they ought to be presented, if I am to show the relations which these facts bear to each other in my mind, however poor that way may be, Mr President, I fear that I must adhere to it. I wish that I were able to present these facts clearly beyond dispute to this Tribunal in the way in which your Excellency has been good enough to indicate, but I fear that if at this stage of my argument

should undertake such a thing I should utterly fail and I fear, therefore, that I must ask the indulgence of the Tribunal while I present in my poor way such facts as I have to present.

The President. — Of course. I only suggested my idea to you about it but you are quite free. I don't want in the least way to change your point of view and the way in which you put your case.

Lord Russell. — I did not anticipate nor did I know that the President was going to say what he has said, but I have myself, as you will recollect, made a suggestion in the same sense. I do not know if you recall it.

Mr Mallet-Prevost. — Perfectly.

Lord Russell. — And I added that if you had made your own arrangements to argue the matter in the divisional way in which you proposed probably it would be difficult for you to abandon it. At the same time you may probably find you may be able to give at least some effect to the suggestion which the President has made; and when you have to refer to the same materials on the several subject matters under these general heads you can give that indication generally without repeating what has been said on the other branch of the subject.

Mr Mallet-Prevost. — That is the plan which I had and which I very poorly attempted to state to the Tribunal — I must have stated it very imperfectly I am sure.

Lord Russell. — May I say at the same time, as this matter has come up, I do not know how it has been pressing on the mind of any other member of the Tribunal, that is to say, either the President, or the Chief Justice of the United States, or Mr Justice Brewer, but I know I have felt and I think Lord Justice Collins has felt the great difficulty of separating the questions of fact without crowning the discussion of the facts by a statement or argument of the law relating to that position of facts. It seems to me that that division is a wholly impossible one to keep up. If one is not allowed when certain statements of facts have been put to ask counsel and indeed to require counsel to say what is the legal position they claim as resulting from that state of facts, then the argument of counsel loses half its force and half its effect. I do not speak of the inconvenience to counsel who have to follow you who have not heard a legal argument which they might desire to hear before they address the court. That is for counsel to determine among themselves and to appeal to the court upon, if they desire it, but that is how it strikes my mind one ought to be able to see what bearing in point of law a given state of facts has in relation to the position in dispute.

Mr Justice Brewer. — I think if perhaps we had talked it over among ourselves first we might have made some suggestion which would have limited the argument but having started with these details of facts on both sides it may be a little difficult to break off now.

Lord Russell. — I quite agree.

The President. — I did not submit this proposition to you as the

opinion of the members of the Tribunal. It was simply my personal feeling which I submitted to you and to the counsel of both parties for the future. You are at absolute liberty to arrange your argument as you like without any doubt and you and counsel for both parties can submit that to the Tribunal in the way and form and how they like. There is no question of what your liberty is, but only in view of the general object which we have I submit to you my personal opinion. Lord Russell is of the same opinion. I do not submit to you any opinion of the Tribunal. It is only my own. If you will allow me to say so — advice from a personal point of view. I, therefore, ask you to go on as you have prepared your argument without stopping or changing it whatever.

Chief Justice Fuller. — I think you need not feel embarrassed by the suggestion that has been made.

The President. — Not at all.

Chief Justice Fuller. — You have your theory laid down, so proceed in your own order.

The President. — Yes, I quite agree with the Chief Justice.

Mr Mallet-Prevost. — If I am to be of any assistance to the Tribunal I must present the facts of this case in such a way that those who follow me may discuss the law. I appreciate very fully the position taken by the Lord Chief Justice of England and in answer to what he has been good enough to say on this point, I will only say this — that when questions of law have been put to me I have endeavored as far as I could to state our legal position and to make clear the question of the legal principles, I have not entered into the discussion of those legal principles thinking it was beyond my assignment but in presenting these facts I present them in some sort of order so that their pertinence may be made clear, and, Mr President, if I do not do that I wholly fail. I can only say as far as is possible I shall accommodate myself to the suggestions which have come from the members of the Tribunal. I have prepared my notes, such as they are, and I have my citations in a certain order, and if I now attempt to alter them I know I shall make it an utter failure.

Now, Mr President, I want to say one word more if I may be permitted. I know that my speech is long, longer perhaps than is necessary but the Attorney General felt it incumbent upon him to go very fully into the facts of the case. I say frankly and with the greatest respect to my learned friend that I think in the citations which he has made from the evidence he has not presented the case fairly; therefore, I think on behalf of Venezuela it is my duty — painful and disagreeable as it may be to me — to present it to the Tribunal — painful and disagreeable as it may be to them to hear it.

The President. — Certainly not.

Lord Russell. — Yes, not at all.

Lord Justice Collins. — No.

Mr Mallet-Prevost. — But I must present those facts according to my view and according to what I think is the evidence.

When we adjourned, Mr President, I was discussing the evidence in connection with the so called shelter at Barima in the year 1683 and 1684, and before I leave that I want to make two observations : one with regard to the fact of the case, and that is, that subsequent to the suggestion made by Beekman in the year 1684, which suggestion I have read, as to having the Pomeroon postholder from time to time visit the Barima and make use of the proposed shelter, there is absolutely no evidence which shows that he went there. There is absolutely no evidence to show that any use whatever was made of that shelter. The character of the shelter, of course, is well known. I say it is well known, because it must have been the kind of shelter that is erected in countries such as the country about which we are speaking, — shelters that are put up for the night, that can be put up with very little labor, and that serve the purpose of shielding a person from the sun and from the rain, — nothing in the nature of any permanent or substantial building : and in connection with a possible application of those facts to the law of the case, I want to read very briefly the view which Queen Elizabeth's government, as early as 1580, took of just such matters. I read an extract from page 44 of the Counter Case of Great Britain, above line 35 : —

“ Besides Her Majesty does not understand why her subjects and those of other Princes are prohibited from the Indies, which she could not persuade herself are the rightful property of Spain by donation of the Pope of Rome, in whom she acknowledged no prerogative in matters of this kind, much less authority to bind Princes who owe him no obedience, or to make that New World as it were a fief for the Spaniard and clothe him with possession : and that only on the ground that Spaniards have touched here and there, have erected shelters, have given names to a river or promontory; acts which cannot confer property. ”

Mr President, I submit that, so far as the evidence in this case shows, the shelter which is said to have been erected in the Barima comes directly under the category of the shelters here referred to by Queen Elizabeth's Government. It was something which was proposed to be put up purely for the purposes of trade. It was something which was not authorised by the Company. It was something which, if it was ever put up, was put up and afterwards abandoned, soon after it was erected. As I stated before, subsequent to the year 1684, there is absolutely no evidence that it was at any time occupied.

Lord Russell. — The French went there in the year 1684, I think you said?

Mr Mallet-Prevost. — I stated before the adjournment, my Lord, that the French went there at that time, and that the place there became inaccessible to the Dutch.

Lord Russell. — And do you suggest that they then continued any length of time there?

Mr Mallet-Prevost. — They continued there, my Lord, as the evidence shows, from that time until well on through the war of the Spanish Succession.

Lord Russell. — But till when?

Mr Mallet-Prevost. — I think some time between 1700 and 1714. I should probably not say 1714, let me say 1711, because in the year 1711 we have the testimony of a party who went through the Barima region, and at that time the French appear not to have been there. But they did go there in the year 1684. They were there in the year 1689. They were there in the years subsequent to that, and they were there at first in the year 1684 without any protest from the Dutch. They went there in hostility to the Spaniards.

Lord Russell. — Was their occupation what one may call a continuous occupation, or was it simply from time to time that the Barima was used as the departure point for acts of aggression?

Mr Mallet-Prevost. — So far as the evidence shows, my Lord, I can only say that the French are spoken of as being there in 1684, in 1689, and at various other dates; and they certainly made the Barima a base of attack not only upon the Spanish possessions further up the river, but also upon the Dutch possessions upon the Pomeroon, because it was the French from Barima under the guidance of the Caribs that, in the year 1689, attacked the Dutch of the Pomeroon colony, and destroyed the colony.

Lord Russell. — At that time the Spaniards and the Dutch were friendly?

Mr Mallet-Prevost. — Yes; in 1689, but not when the French first went to Barima in the year 1684.

Lord Russell. — No.

Mr Mallet-Prevost. — There are two references to the year 1684 which will be found in the first volume of the Appendix to the British Case at page 187, and which show the French occupation of that point. I will read from opposite letter B :

“ Subsequently, through Abraham Baudaart, Postholder in Pomeroon, and divers Indians, I have some time ago obtained information that the French, who are at war with the Spaniards, and are apparently (as I hear indirectly) about to come into collision with our nation, have, now two or three months ago, made themselves masters of the fort in Oronoque after resistance from those inside, and after the loss of their Commander and many persons on either side, and they have taken prisoner the Governor of Trinidad as he was on his way to the said Oronoque, but obtained little booty, since information of this going inland reached the silver on its way down.

It is still unknown whether the said French have abandoned the fort. They have for their assistance many Caribs from Copename expelled by his Excellency Baron van Sommelsdyk, and taking refuge here to our great disquietude.

Just previously Captain Gabriel Bishop, with his barque from Surinam and Berbice, coming into the Barima in order to trade there in annatto, letter-wood, etc., being surprised and overtaken by the Caribs aforesaid, he, with fifteen of his men, was slain, and the barque was cut to pieces and sunk to the bottom with threats to some other Indians friendly to us, that they, conjointly with the French, will probably come to destroy all the plantations outside the Fort at Essequibo, so that apparently we have an attack to expect soon."

It seems to me, Mr President, that this last passage is significant in view of the fact that in the year 1684 the Dutch and the French were at peace. The French had come to the Orinoco and the Barima, and they had attacked the Spanish. That was a war measure. The Dutch here recognised the fact of the presence of the French in Barima, and not only their presence there, but their attack on and destruction of some Dutchmen who were passing through Barima at that time, and yet there is absolutely no evidence anywhere that this was made the subject of a protest by the Dutch to the French. And not only so, the language which is here used and which speaks of a possible conflict with the French and a possible coming of the French to the Dutch possessions, would seem to imply that the Commandeur who was writing was not regarding the Barima as a point whose occupation by the French was an occupation hostile to the Dutch.

The passage at page 188, opposite letter C, has already been referred to by the Chief Justice of the United States, and I only refer to it now simply in order that my record upon this matter may be complete.

In the second volume of the Appendix to the Case of Venezuela, are some passages which relate to the year 1689, and which show that the French were still in possession of the Barima at that time. This is on page 62:

"The French are making a strong house in Barima; they come there often with 3 or 4 barques to traffic with those hostile Caribs, and threaten soon to come and pay us a visit. We are now, thank God, in a condition to resist the enemy, with our 40 able-bodied men, all strong negroes, in this fort with a thick stone wall and heavy palisades a foot thick erected outside against the wall. But the great scarcity of provisions forces us to let ten or twelve men seek their sustenance outside of the fort, down the river; where they also serve as a lookout watch. Yet, the river being broad and having many mouths, light craft

can come in everywhere without (our) having the least (knowledge) of it. ”

And, again, on the opposite page, page 63, we have the answer of the Company to this statement of the Dutch Commandeur :

“ You write that the French were said to have made a fort in Barima or that they were engaged in making one, and that they at times not only came to trade there with three or four ships, but also threatened to come with the Caribs to visit you — ”

showing clearly that, in the minds of the Company, the French presence in the Barima was as yet not a visit to the Dutch.

“ so that it was necessary to keep watch continually, in order not to be suddenly attacked by them. Time gained is much gained, says the proverb (and this is true) especially in war for in the meanwhile one can put oneself in condition for defence, as you apprise us you have done, and that at present there are in the fort 40 able, bodied men — ”

and so on. And again on page 64 of this same volume, referring to the year 1695, which is five years later, we have this statement, — it is at the bottom of the page :

“ This is a copy of my last letter, dated April 19 of this year, by the ship't Casteel van Souburg, Captain Pieter van Goethem which sailed from here on the 29th of the same month. We have been kept here in continuous alarm, since at various times we have had tidings that some French, aided by Caribs from Barima, are staying in the mouth of the river Pomeroon — ”

showing that the French occupation, such as it was, was even threatening the Pomeroon river itself —

“ who say that they will come here to visit us. In view of this I have at once sent order to all the planters to send down all the male slaves, in order to strengthen the fort, so that we may defend ourselves well in case of an attack. This removal of slaves has already hampered our work on the plantations, and will be in part the cause of our inability to send more than 700 hogsheads of sugar in October. Another important cause is the disease and mortality that now again prevails, both among Christians and slaves, and among the natives of the country as well, whereby I daily suffer great loss. ”

This is the condition of things as is shown here from the year 1684 to the year 1695, and it is clear from these extracts that the Dutch were not at that time in the Barima and that they could not have been.

Now I will call the attention of the Tribunal to an expedition which

passed through this region in the year 1711, and which will show the condition of things there at that time. It is to be found also in the same volume, the second volume of the Venezuelan Case at page 73. This is an extract from the journal of a secret expedition, to the Orinoco. It was a Surinam expedition, and this is the part of the Record which has reference directly to the River Barima :

“ On April 9, 1711 — Started again from there in the morning and came about noon into a creek named Mora. — ”

of course, that is the Mora Passage, —

“ and came in the evening into the river of Barima.

April 10. — Started again from there and came in the evening to the mouth of that river.

June 14, 1711. — Started from there and in the afternoon came into the river of Barima.

June 15. — Started from there in the morning at 3 o'clock and slept at an unknown shelter. ”

Whether that shelter was the same which is said to have been erected in the year 1683 or not does not appear, but if it was, that it was abandoned is clear from this extract.

Possibly in this connection as well as in another, Mr President, it might be well to call attention to a fact that I have referred to on one or two occasions, but which I desire to make clear as it will be constantly coming up in the discussion of the history of this region : and that is, that any acts in this region by the Dutch from Berbice and the Dutch from Surinam are acts which can have no relation whatever to the present controversy, except to show that the Essequibo colony exercised no exclusive control over that region. The present title of the British Government to British Guiana is a title which is derived from the Essequibo colony. The Surinam colony remains in the hands of the Dutch. The Surinam colony was under a different Company from the Essequibo colony. The two colonies were at times antagonistic, and measures were taken by the Essequibo colony to prevent the Surinam colonists from trading within the limits that were claimed by the Essequibo colony for itself. I will call attention to one or two documents where that appears.

Lord Russell. — But they were both subject to Dutch sovereignty, were not they?

Mr Mallet-Prevost. — They were both subject to Dutch sovereignty, my Lord, but let me point out this fact. The region from Barima point to the Moruca is claimed by Great Britain because it is alleged that region was an appendage to the Essequibo colony. It is claimed that it was controlled from the Pomeroon, and that when, in the Treaty of London, the establishments of Essequibo and Pomeroon were ceded to Great Britain, the term Pomeroon included the region from the Pomeroon to the Barima. Hence, if Great Britain has any title today to the region between the Pomeroon and the Barima, it is a title which can be derived only

through the Essequibo colony. I am going to show that the Surinam traders and the Berbice traders went into this region, traded there, exercised other acts there, and that they did so because it was regarded as a territory that was common ground and as a territory which was beyond the limits and the jurisdiction of the Essequibo colony.

Mr Justice Brewer. — Surinam was not surrendered to Great Britain?

Mr Mallet-Prevost. — No, Surinam was not surrendered to Great Britain; and any rights which the Surinamers might have acquired by reason of those acts, were acts which would appertain to the Surinam colony, and not to the Essequibo colony.

Lord Russell. — I see.

Mr Mallet-Prevost. — Let me call attention to a document on page 226.

Mr Justice Brewer. — Was not Berbice surrendered to Great Britain?

Mr Mallet-Prevost. — Berbice was not surrendered to Great Britain, but it is not claimed by any one that the region from the Pomeroon to the Barima is appurtenant to Berbice.

Lord Russell. — Does it really matter?

Mr Mallet-Prevost. — I think it matters very greatly, my Lord. The whole contention here, my Lord, is that the region from the Pomeroon to the Barima was Dutch territory because it was under Dutch control, and the Dutch control that is alleged is a Dutch control which commenced in Essequibo.

Lord Russell. — What I want to know is, why are not they to have the benefit of that?

Mr Mallet-Prevost. — Each one of these Dutch Colonies had distinct limits my Lord.

Lord Russell. — I understand that perfectly.

Mr Mallet-Prevost. — And, therefore, if I may say so, there was an agreement —

Lord Russell. — But supposing they defined the limits in those charters; then is evidence that some other Dutch people outside the limit of the particular Charter exercised rights which would be some evidence of dominion and possession and sovereignty by Holland. Why is that to be excluded? I do not see why.

Mr Mallet-Prevost. — My Lord, there were a number of Dutch colonies along this coast. I refer now to three, Surinam, Berbice and Essequibo. They were competitive colonies. They were antagonistic colonies. Each one had what it claimed to be its limits. Surinam and Berbice colonists were forbidden from trading in Essequibo. They did go and trade in Barima. And I shall show that that fact is an acknowledgment by the Essequibo Dutch that that region lay beyond the limits of Essequibo itself.

Lord Russell. — It may be so.

Mr Justice Brewer. — If Dutch at all, it belonged to Surinam. Is that your proposition?

Lord Russell. — No, that it belonged to Berbice equally, as I understand it.

Mr Mallet-Prevost. — My Lord, it has been claimed that the colony of Essequibo has a right to this region, because, among other things, it is said, it exercised a control there, and an exclusive control. Now, if I can show, as I say I can show, by reference to the documents which I shall now cite, that the other Dutch colonies were prohibited from going to this region, but that they did go to this region, it goes to show that the Essequibo colony was not exercising there the exclusive political control which it was alleged that it did exercise.

Lord Russell. — You are certainly entitled to say it for that purpose and in that connection : but, if you established that position, it does not seem to me to go the whole length of getting rid of the question of whether or not there was Dutch dominion there.

Mr Mallet-Prevost. — I do not intend to get rid of it by any such short cut, my Lord.

Lord Russell. — No.

Mr Mallet-Prevost. — But I do want to make clear the relations of these various Dutchmen in that region to each other, so that the proper weight may be attached to the acts by one party or by the other.

Chief Justice Fuller. — You have spoken of the different Companies?

Mr Mallet-Prevost. — Yes, at first, Chief Justice, the West India Company had its limits, including the whole Guiana coast ; but the charter which was given in the year 1674, limited it to Essequibo and to the Pomeroon, and it no longer had any jurisdiction over the region to the east. The Berbice colony was a colony that was established as a private colony as far back as the year 1627, and the Surinam colony was a colony that became vested in a separate Company which I think was known as the Surinam Company. So that the West India Company through whom Great Britain derives any rights that she has to this territory had nothing whatever to do with Surinam or with Berbice after the year 1674.

Lord Russell. — That is what I was pointing out to you. You say that Great Britain has no title except what she derives through this Company. That is what I am pointing out to you is I think a mistake. I am pointing out to you that she derives her title through the sovereign power that was behind that Company.

Mr Mallet-Prevost. — My Lord, neither the Surinamers nor the inhabitants of Berbice went there as exercising any authority.

Lord Russell. — Very well.

Mr Mallet-Prevost. — And while it is true, as your Lordship has said, that at the back of the West India Company lies the national authority, I do point out this fact, that the theory of the British contention here as to the theory of the British title, is that in receiving under the Treaty of London the establishments of Essequibo and Pomeroon they were receiving those, and that those establishments included this coast : in other words, they are not alleging a title to this region through Surinam nor

through Berbice. The chain of title which is here presented is a chain of title which runs through the Essequibo Company, and hence I am entitled to show that the region between the Pomeroon and the Barima was a region that was not regarded either by the Surinamers or by the inhabitants of Berbice as something which appertained to the Essequibo Colony, neither was it so regarded by the Essequibo colony itself, and the fact that the Surinamers and the inhabitants from Berbice went there is a proof of that fact.

Now, Mr President, I refer to a document which is to be found at page 226 of the first volume of the British Case Appendix. There are three documents which follow each other here which show clearly what the relation of the Surinamers to the Essequibo colony was in 1703. I read from the top of page 226 : —

“ Be it known likewise to your Honours that the Governor of Surinam, Paulus van der Veen, shows himself ill-disposed because his traders here in our district, namely, Essequibo, Baumeron, and Demerary were not permitted to trade. But they were thus forbidden because our traders have no permission to be able to trade in this district — ”

it says there, “ this district,” I think it undoubtedly means “ his district ” —

“ and should the same be generally permitted, then the oriane trade would in one or two years’ time be brought to no price at all, the which, in my judgment, would entail great loss to the Noble Company. ”

Sir Richard Webster. — The “ oriane trade ” there referred to, is not the *Orinoco* trade, it is the dye trade.

Mr Mallet-Prevost. — The next document is on page 227, opposite E, and it is on the same subject :

“ The Company will take due care that the Governor of Surinam obtains no trade in annatto in the district situated under our Charter, and therefore you will do well to prevent it, as you have done up to this time, and to take, moreover, such measures that private planters in Rio Essequibo may still less undertake this trade. ”

And hence, when it is alleged on the part of Great Britain that certain trade relations with the Barima are trade relations which establish a title in Essequibo, I say that an extract such as I have here read contradicts it, in so far as that trade may rest upon trade by the inhabitants of Surinam, because here we have a statement that the inhabitants of Surinam were not allowed to trade to the colony of Essequibo or within the limits of that colony. And at page 228 opposite the letter C, we have this further statement .

“ What you have been pleased to write as to not yet tolerating that the inhabitants of Rio Suriname carry on any trade at places lying under the Charter of the Company, I shall not fail to take scrupulous care that this do not occur, and shall then await further orders. ”

There is a similar passage which occurs in the third volume of the Appendix to the British Case many years later, but which also throws light upon the relation of these Dutch colonies to each other. It is on page 114 of that volume, opposite letter C :

“ A boat from the plantation La Retraite, etc., having become aware that several Surinam rovers provided with passes from your Excellency — ”

this is a letter from the Essequibo Governor to the Surinam Governor —

“ provided with passes from your Excellency to go and trade in Barima instead of doing so stay for an indefinite time in this Colony — ”

making clearer the distinction between Barima and this Colony —

“ and are therefore apparently only trying to cheat their creditors in Surinam, I shall compel them all to go away, and even this week I have ordered one Wolff to return immediately to Surinam, not allowing one more to remain here unless it be in want of bread or anything. Whilst on this subject I take the liberty to inform your Excellency that mentioning the River Barima in those passes causes complaints from the Spaniards, who, maintaining that the river belongs to them, in which I believe they are right, some of these passes have already been sent to the Court of Spain. ”

So that here we have a statement from the Governor of Essequibo which is in the nature of a complaint against the Governor of Surinam, because certain Surinam traders come to the Essequibo colony but at the same time a distinct recognition of the fact that the Surinam Governor if he chose had a right to give the passes to his own people and to go and trade in Barima and that Barima was within the proper limits of Spanish dominions.

The last point I have made is the question of claim I shall discuss by and by.

Lord Russell. — Between D and E :

“ While on this subject I take the liberty to inform your Excellency that mentioning the River Barima in those passes causes complaints. ”

That is in reference to a requirement that each person passing should have an authority from the Dutch Governor?

Mr Mallet-Prevost. — Yes; the Dutch who left the colony had to show passes.

Lord Russell. — Whether Dutch or not?

Mr Mallet-Prevost. — Not only the Dutch; anybody leaving the colony; anybody who was within the Dutch colony.

Mr Justice Brewer. — That refers to passes from the Surinam Governor?

Mr Mallet-Prevost. — Yes; and Surinamers did leave Surinam undoubtedly to go to Barima to trade and the Essequibo Governor complains of the Surinam traders coming into this colony instead of going to Barima and advises him not to mention Barima because he — Gravesande — believes it is within the Spanish lines.

“ In all passes issued by me, I only grant permission to pass the posts and to trade amongst the Indians without mentioning any place; and since in the instructions to our postholders they are ordered to respect your passes this can be very well avoided. ”

It is very easy to see that Dutchmen leaving the Surinam and coming along the coast for the purpose of going to the Barima had to pass by Essequibo and might well stop there and would require passes in order to go further on.

Now with regard to the relations of Essequibo to Berbice, there is one document I should like to call attention to, in the Appendix to the British Counter Case at page 45, and it shows the same distinction between Essequibo and Berbice which I have just shown existed between Essequibo and Surinam. At page 45, there is a contract between :

“ Mr Hendrik Rol, commandeur of the Fort and Colony of the River Essequibo and the appurtenant rivers and districts, in the service of the Zeeland Chamber of the Honourable Chartered West India Company on the one hand, and those empowered by the Commandeur, Mr Cornelis Marinissen d'Heer, in the River Berbices; ”

and it recites that they

“ have contracted in the following manner concerning the hereinafter mentioned points, to wit, concerning the possession of the River Demerara — ”

which appears to have been at times in dispute —

“ by the Commandeur of Berbices and the seizure of cargoes in the river of Moruka by the said Commandeur, H. Rol. ”

Firstly, the said Commandeur H. Rol promises to restore

and deliver up to those of Berbices the impounded goods or cargoes with the exception of two 2 pounder pieces of ordnance with some ammunition which are to be sent back to the noble lord and master, and then to give satisfaction for the same upon the following conditions :—

That the aforesaid inhabitants of Berbices shall defray and pay all the expenses incurred in bringing the goods seized from Moruka to the fort here, according to the account thereof.

Secondly, that those of Berbices shall immediately, and without delay, renounce, give up and evacuate the aforesaid River Demerara with all its dependencies and rights, in favour of the said Commandeur of Essequibo or those empowered by him. ”

making a distinct line of division for the purpose of these two colonies :

“ Thirdly, that all the dye which is now found in the River Demerara, either in the warehouse or in the boats or other vessels, shall without question be handed over to the Commandeur Hendrik Rol, or those empowered by him, upon the payment of the price for which such dye has been obtained from the Indians, and further the above mentioned from Berbices promise the Commandeur of Essequibo that they will never again pass beyond their appointed boundaries in order to purchase dye or such things, or to prejudice any of the Company's interests. ”

A distinct agreement by the authorities of Berbice not to enter upon trade within the limits of the colony.

Lord Russell. — A trading regulation *inter se*.

Mr Mallet-Prevost. — Precisely ; and it is the fact that that regulation was made which shows the relation of these various Dutchmen to each other in the Barima region.

Coming back now to the history of the Barima itself where I left off after mentioning the Surinam expedition I call attention to the fact that we have arrived at the year 1714 in the history of this coast region, a year which has been emphasized by the other side as being specially important in connection with the Treaty of Utrecht ; and in 1714 there is no Dutch occupation of any kind, of the region to the west of the Pomeroon.

Passing from 1714 to those that follow the first piece of evidence to which I shall call attention is an extract in the second volume, of the Appendix to the British Case at page 41. It was appealed to by the Attorney General, but the full significance of that I do not think at the time was made clear. In connection with this I desire to call the attention of the Tribunal to the Venezuelan Atlas at page 37 which is the map of De Lisle of this district. It was stated by the Attorney General as an admission by the Spanish authorities that in this year 1743 the Dutch were in possession of the coast from Orinoco :

“ And in view of the fact that the Dutch are established within this demarcation and limits, on the continent of the Province of Guayana, and occupy with their cities and mills, the territory which stretches from the Orinoco to the before-mentioned Surinam, a distance of 5°, from 318° 1/2 to 324° of longitude —

by reference to the map it will appear that 318° would come very near to the mouth of the Essequibo :

“ it would be well to consider whether they were in possession of those territories at the time the Treaty of Münster or Westphalia was signed in 1648, taking the necessary measures for the purpose, in connection with what was stipulated and is deduced from Article V of the said Treaty. ”

Now down below at C.

“ And equal attention is due to the object with which the Dutch established themselves to the windward of the river Orinoco in 5° north latitude and 325° nearly of longitude, according to Delisle. ”

And that I have asked the Tribunal to look at with regard to the document I am reading. Now below E is an important passage.

“ The mouth of the River Essequibo offers facilities for carrying out those designs being situated according to this geographer in 6°40' latitude and 318°10' longitude. ”

Now I call attention once more to the top of the page where the limits of the Dutch occupation are given as 318 1/2 to 324 degrees of longitude and to the position at the bottom which is given of the mouth of the Essequibo to show that the statement I made with reference to the 318 1/2 is correct.

Lord Russell. — What do you say are the limits?

Mr Mallet-Prevost. — The westernmost limit of the river is 20' to the mouth of the Essequibo — the western limit is given as 318°30' and at the bottom of the page it is 318°10'.

Lord Russell. — I want you to fix what the first limits would point to.

Mr Mallet-Prevost. — 318° 1/2 would be somewhere between the mouth of the Pomeroon and Amacura.

Lord Russell. — And 324°?

Mr Mallet-Prevost. — 324° is opposite the Macouria.

Lord Russell. — He mentions two specific places which are well-known places, Orinoco and Surinam and apparently he has given no definition for going up the Orinoco at all, he simply says going up the Orinoco.

Mr Mallet-Prevost. — He defines what he means because he says 318° 1/2.

Lord Russell. — He says from Orinoco to Surinam and they are well known places; there is no ambiguity about them.

Mr Mallet-Prevost. — Nor is there about this. We have Delisle's map, and I refer to this because it is on a larger scale, though the map of 1722 shows practically the same thing. It emphasizes this fact to which I have called attention more than once, that when the Orinoco is spoken of in many of these documents it is supposed it referred to the main mouth. It is the region of the Orinoco itself and here it is the region from Orinoco to Surinam and is referred to by degrees which we have had before.

Sir Richard Webster. — If you refer to the 1722 map it shows a boundary.

Mr Mallet-Prevost. — If I am diverted into this question of boundaries which I have discussed, and will not discuss before the Tribunal again, I shall be a very long time. I shall refer the Tribunal to it, but if I am to be led into that I shall be led into a very long story. As you have called attention to this I will state one fact and that is the boundary shown in No 38 of Delisle is not intended by Delisle as a political boundary; that is demonstrated in a report which is printed in the Case and which I will refer to, not as evidence but as part of my speech. But that is nothing to do with the document I am now reading. Here is a statement given and a definition given of the limits. We have the map before us and it is clear from this that the writer was referring to the Dutch settlements on the Pomeroon and not to any supposed settlement on the mouth of the Orinoco itself.

Lord Russell. — I was speaking of the part south of the Pomeroon and south of the Pomeroon towards Cayenne.

Mr Mallet-Prevost. — Yes.

Lord Russell. — It is rather curious.

Mr Mallet-Prevost. — It is not a question of the river itself from Orinoco where the Spaniards were and, we are given the metes and bounds in latitude and longitude.

Lord Russell. — It may be it is a distance of 155 miles of coast line.

Lord Justice Collins. — 318 1/2° brings you to the east of the Essequibo and not to the west of it. According to my map it would bring the boundaries of the Orinoco to the Essequibo.

Mr Mallet-Prevost. — I think the controlling passage in that is to be found in the extract itself; the position of the Essequibo is there defined. Would your Lordship look at the bottom of the page below E where the writer of this document says :

“ That the mouth of the river Essequibo offers facilities for carrying out those designs being situated according to this geographer — ”

now this is an interpretation which this gentleman is putting upon it, rightly or wrongly, we must read it in the light of them —

“ in 6°40' latitude and 318° 10' longitude, ”

318° 10' longitude is here given as the mouth of the Essequibo itself.

Lord Justice Collins. — He would make the boundary of the Orinoco distinctly the Essequibo according to your view.

Lord Russell. — Within 200 miles or more.

Mr Mallet-Prevost. — If you would look at the map the mouth of the Orinoco would come nearly in the same longitude with the Essequibo because the delta is made to extend very far to the east. The map itself is not right but the difference between the mouth of the Essequibo and the Orinoco is not great.

Lord Justice Collins. — I should say 3/4° of this.

Lord Russell. — The map you admit is not correct, but you say that shows it was the Orinoco district and not the river that was meant.

Mr Mallet-Prevost. — I do; and the reason I cited this is that this document which has been endeavored to be presented here as evidence of Dutch occupation up to the mouth of the Orinoco is not a document which can be seriously treated as establishing that fact.

Now, there is no claim on the part of Great Britain to any occupation of this region, from now on, to the year 1760, but there are one or two incidents which are referred to in the intervening period and which I do not desire to pass over in silence. One of these is a request in the year 1744 by a Chief of the Indians in the Orinoco region to have the Dutch station a postholder in Barima. It is to be found in the 2nd Appendix to the British Case at page 42 and it is not necessary for me to read it but I will state in that connection simply this : that the request of the Indians grew out of this fact; some slaves had escaped from Essequibo and the Caribs who at that time were in the Barima were urged to catch them. It required a great inducement for them to do so. They finally did. The runaway slaves were killed and their hands were sent back to the Governor. The Indians were well paid for their work and then came the message from the chief of the Caribs. If a post was established in Barima the postholder would become responsible for any slaves that might run away from the Barima colony. That is cited by my learned friends as showing that that is a political exercise of authority over this region. I do not stop to refer to this point but it will be found as I say at page 42 of the 2nd Appendix to the British Case, line D.

The answer of the Company is at page 43 of the same volume and another statement in regard to it is page 44, and finally we have a statement in the same volume at page 93 showing that nothing whatever was done under that request. Then in 1749 there is a document which shows what nations were at Essequibo at that time. It is the third volume of the British Case Appendix, page 152.

Lord Russell. — There is a passing reference there to the establishment of a postholder at Barima.

Mr Mallet-Prevost. — I refer to them all in that connection. The Company authorized that he should make a trial of it and it was not done. I have not in the references I have given exhausted all the evidence on the point.

Then in the 3rd volume of the Appendix to the British Case, page 152, we have a petition from Van Rosen, a gentleman who had probably come from Surinam. He had been a planter in Surinam and he addressed this petition to the King of Sweden :

“ May it please your Lordship to forgive me for being so bold as to bring to your notice a matter of great importance. I have heard that between Orinoco and Essequibo there lies a large and most valuable tract of uninhabited and desert land with two large rivers or rather streams. The first from here is called Barima and the second Waini — ”

that only shows his ignorance and his ignorance simply reflects the ignorance of those about him in the colony —

“ and the second Waini, lying at the mouth of the Orinoco and I have heard the said land belongs to the King of Sweden and could be made to yield large sums annually if it were cultivated or planted. The soil is very fertile for sugar, ”

and so on. Of course, nothing came of that petition but it is important to show that in the year 1749 a man living in Essequibo could write making statements such as are contained in this letter. It certainly reflects what must have been not only his opinion but the opinion of those about him.

That petition bringing no results we find he made a second effort in another direction in 1755 which is to be found at page 153.

Sir Richard Webster. — I think this document was found in his box and not sent.

Mr Mallet-Prevost. — I do not care for that. They are documents thought worthy to be presented by the Attorney General here and I suppose I am at liberty to make use of them for the purpose of showing that whether he sent them or not when he wrote them; he made certain statements which go to show that he and those about him regarded the Barima as something not in Dutch control. He was afterwards arrested and I shall have a good deal to say about him. He was joined in this letter by another planter of Essequibo called Finett.

“ We, the undersigned, did in the year 1754 go to the Rivers Waini and Barima which lie at a latitude of 8° north, and did inspect the same, and found there an immense tract of good and fertile land which could be used for sugar, coffee, cocoa,

rice and other plantations ; which rivers have on the east the Hollanders to the River Essequibo, and on the west the river of Orinoco belonging to the Spanish crown. The River Barima is quite capable of being navigated by the largest vessels without danger ; we therefore beg for the favour (since we, the undersigned, have ascertained that the said river belongs to Your Majesty) of being granted Your Majesty's commission ; ” and I think that is the only part that is pertinent.

Lord Russell. — What does that phrase there mean ?

“ Which rivers have on the east the Hollanders. ”

Those are the Waini and Barima.

Mr Mallet-Prevost. — Precisely.

Lord Russell. — It would be southeast, would not it ?

Mr Mallet-Prevost. — No ; he is speaking of the Barima and Waini and says he has been there (pointing on the map). That is east of the Hollanders. He speaks of this part of the Waini quite as well as the other part. It is southeast. Of course the Orinoco is really north from here but he is speaking of east and west in that way.

The President. — How do you explain this ? They were addressing a petition to the King of Prussia having tried first the King of Sweden ?

Mr Mallet-Prevost. — As to the King of Sweden, the only explanation that I can give arises out of an incident which I shall refer to on the question of control, viz : the Swedish attempt to take the Barima in 1734. The King of Prussia I can give no explanation of whatever. Van Rosen was a German subject probably a Prussian, and it may be it was for that reason he addressed himself to the King of Prussia. I come now to certain specific claims which relate to the years 1760, 1764, 1768, and 1769, but in order to understand exactly what those events mean I shall first invite attention to a document of the date of 1758 in the 2nd volume of the Appendix to the British Case at page 148. This is a letter from the Prefect of Missions, Garriga, speaking of certain slave traders and it was on the report that he made that certain action was shortly after taken by the Spanish authorities. This is one of the expeditions to which I point as evidence of Spanish control at this time. I read opposite B :

“ From Moroco and Waini the said slave dealers also come ; and by the Orinoco they enter the Aguirre and Carapo. Although they have no fixed time for their journeys, for they come on and go whenever they choose, it is, nevertheless, well known that they are firmly fixed there for the greater part of the year. Indeed, numbers of them have lived there for more than ten years permanently among the Caribs, carrying on their Slave Traffic ; and these without moving send the slaves to their agents in Essequibo, and receive in return merchandize and other articles, by which they are enabled to purchase more

from the Caribs. The least time they remain in these places is a year, but more generally they reside there for two or three years.

This Slave trade has so completely changed the Caribs that their only occupation is constantly going to and returning from war, selling and killing the Indians of those nations already mentioned. ”

In connection with the whole subject of slave trade I shall have something to say further on but I will stop for a moment simply to add this to the extract which I have read, — that the balance of this letter which I shall not read but which is exceedingly important as well as other documents shows that this slave trade was carried on not only in the territory now in dispute but far beyond the Orinoco and into territory confessedly Spanish. It was a trade carried on surreptitiously — the Dutch often disguising them selves as Indians and going with the Caribs for the purpose of making prisoners of Indians within the Spanish dominions. The raids were apparently carried into territory away from the Essequibo colony and which was confessedly Spanish. Raids were made on the missions and the Missionaries themselves taken and made slaves of, and the statement which is here made I now call attention to because it was made in the nature of a complaint by the Prefect of the missions regarding the conduct of these slave traders in the region about which I am now discussing.

The action taken by the Spanish authorities will appear at page 187, of the same volume.

“ Having received from the Very Reverend Father Prefect of the Missions in this Province the information communicated to him by four Indian poitos, fugitives from the tyrannical power of the Dutch settlers in the adjoining Colonies of Essequibo and Surinam ”. —

pointing to the fact that these Indians who had escaped from Surinam and Essequibo and doubtless had been there as slaves were Indians stolen from Spaniards or Spanish dominions —

“ that at the mouth of the Creek Barima, which runs from the greath mouth of that river, five Dutchmen from the said Colonies are established in huts and carrying on their usual inhuman and lucrative traffic with the nations of wild Indians who dwell and trade on the Orinoco, purchasing from them the infidels captured in their wars and raids, in exchange for ironware, clothing, and munitions of war ; and that the said Dutch are waiting for a batch of Indians, whom they have ordered to be purchased through their allies, the Caribs, who can go more freely up this river ;

showing that these raids were not limited by any supposed territorial limits but they went where they could safely go —

“ after which they are going back at once to their Colony with the product of this illicit transaction and the human beings they have up till now obtained, to which number belonged the four Indians who escaped from their tyranny and came to claim the protection of the said Missions. ”

Pointing to the fact I just alluded to that they were Indians from the missions which were spoken of.

“ And since it conduces to the service of God our Lord and of His Catholic Majesty to prevent such a cruel and unlawful traffic, to keep the Dutch of the said Colonies by chastisement within their own possessions (if so be that they hold them lawfully), and to deter them from pressing into these dominions of the King through the intersecting rivers; by these presents, in virtue of the powers of my offices and those which have been conferred upon me for such emergencies, I order and command Don Juan de Dios Gonzales de Flores, Lieutenant of Infantry, and second officer of this fortress, that forthwith, and without the slightest delay, he is to go on board the King's vessel which is lying in the Puerto Real manned with ten soldiers of the line, and armed in the usual manner with two swivel guns, and supplied with provisions for twenty days and Spanish pilots for the river and some of the fugitive Indians, for the place or hut where the said Dutch are to be found. That the said Lieutenant is to proceed direct thither, sailing day and night, in order to gain every moment of time, and upon arriving he shall attack the said hut, first of all surrounding it, and shall hold prisoners therein all the Dutch, French, or Spaniards he may find, calling upon them in the King's name to surrender, and if they will not do so, or have recourse to arms, using his forces until he has chastised them and made them prisoners, and shall do the same in respect to any Carib Indians who may be aiding and assisting in this inhuman traffic. ”

Showing that the exercise of jurisdiction was an exercise of jurisdiction intended to be general for whoever might be engaged in this traffic.

In this respect let me call attention to the fact that when we later come to examine the instances of alleged exercise of Dutch jurisdiction it stands on a different basis. The Dutch jurisdiction was always over some mission from their colony and never on any ground of territorial rights :

“ And he shall likewise seize all and any vessels he may meet going up or coming down the river, whether foreign or Spanish,

which are sailing without proper papers, and the said Lieutenant shall bring their captains and crews well secured to this fortress, and also their entire cargoes, without allowing the least fraud or irregularity on the part of the soldiers under his charge, for which, and all else appertaining to the exact fulfilment of this order, he is to be answerable as an honourable officer, and as such it is expected that he will proceed with the greatest possible zeal and disinterestedness in the Royal service. ”

Then at page 188 D we have in the resolution which was subsequently adopted in a very few words the result of this expedition :

“ The result of which expedition has been that the said Lieutenant Don Juan de Flores, has brought as prizes a schooner and two launches — ”

and we have a more detailed report of what took place from Flores himself at page 189 :

“ In the City of Santo Thomé of Guayana, on the 29th day of the said month and year, in order to carry out the report in hand respecting the seizure of the vessels, their Honours being in the Royal “ Contaduria ”, by order and command of the Commandant, there appeared therein the Lieutenant of Infantry Don Juan de Dios de Flores, to whom their Honours administered an oath, which he made by God our Lord and a sign of the Cross, under obligation whereof he promised to tell the truth concerning what he might know and might be asked, and having been questioned respecting the seizure of the said vessels, as to where and how he took them, whether they made resistance with fire-arms, and as to the whereabouts of the crews, he declared : That having gone from this port, by order of the Commandant, bound for the Creek Barima, when he was tacking round its mouth on the eleventh day, at about 4 o'clock in the afternoon, he saw a ship coming from the Point of Guani, and trying to find the mouth of the Orinoco ; that he went in pursuit of her, and having overtaken her and fired one shot, she surrendered immediately ; and going on board he only found ten Aruac Indians who came from the Colony of Essequibo to fish in this river, three of whom escaped by jumping into the river ; and on the day following he continued his course, and entering the mouth of the Barima, and going about 3 leagues up the creek, they saw a vessel which, owing to low water, was lying aground at a considerable distance ; and they could not board her until the rise of the tide allowed them to approach during which time the crew of the said schooner, having seen and recognized them, took to flight and carried off the sails with

them and cut to pieces the greater portion of the tackle, and although the declarant tried various expedients to capture them he could not do so, but ascertained from the Aruac Indians, whom they had previously captured, that the schooner came from the Colony of Essequibo for the same purpose of fishing; and that finding himself with these two vessels and without sufficient men to pursue his course to the end, for he had put from his own vessel two men on board the first and two more on the second, and had only six soldiers left; and being informed that it took five days to go up to the place in which the traffickers in poitos were; for this reason, and also because the said Dutch would be already informed by those who escaped from the schooner, that the declarant was coming up, and considering that his orders only extended to the mouth itself, he resolved to turn back, which he did, going up the river, and finding the other launch, in consequence of information he had received as to its whereabouts. "

In this connection I might point out the order I before read showed that he was to go in search of these traffickers in Indians and Indian slave-raiders and did not mention the mouth of the Orinoco. The order is perfectly clear, the object of his expedition was to clear the river of any slave-raiders. He did so and came back with these prizes.

Lord Russell. — What he is directed to do is, to go on board the King's vessel, make with so many men and provisions for the place or hut where the Dutch are to be found and then he is to proceed.

Mr. Mallet-Prevost. — Quite so; it does not limit it to the mouth of the Barima.

Lord Russell. — And he does not appear to have landed at all.

Mr Mallet-Prevost. — But he did capture Indians there; the Essequibo schooner that was fishing went off and while he should have continued he gave the reason he did not do it, among others, because the Dutch schooner, having escaped, the Indian slave traders would have knowledge of his approach and his going further would be useless.

Lord Russell. — The complaint on which this is based stated that there was there and had been for a considerable time a fixture of the Dutch. Is it not so?

Mr Mallet-Prevost. — It is stated that there are certain slave raiders and I read a letter from the Prefect which referred to them in this region; but the whole letter when I come to read it as I shall in another connection shows that these slave-raiders were everywhere. They were far up the Orinoco and penetrating into the interior of the country in every direction.

Now this expedition is sent out into this region for the purpose of clearing the Dutch out; there is no limitation upon his instructions to go to the mouth of the Barima.

Chief Justice Fuller. — I do not want to interrupt you, but the order stated that having received the information that five Dutchmen engaged in that inhuman traffic were established at the mouth of the Barima in huts therefore he was commanded to go and take the huts and so forth, and he availed himself of that to say that that is the reason he did not go up the Barima.

Mr Mallet-Prevost. — Precisely; but the object and spirit of the order was to clear the Dutch slave-raiders out.

Now we have the statement of some of the Indians that were taken that explains clearly what the nature of these slave-raiders was, and the declaration of one of the Indians will be found at page 195 of the same volume. It is a declaration of an Aruac Indian, and we have the fact that this Aruac Indian was conversant with Spanish. This is what he says :

“ That he was a native of Muruca, a place where the Post of Essequibo is situated; that his name was Simaracuri, an Indian of the Aruac nation; that the purpose for which he came to the River Orinoco was to fish; that he was sent by a Dutchman called Fardüll, and that the cargo consisted of a small quantity of salt. ”

“ Being asked if he knew to whom the other vessels which were seized belonged, he replied that the schooner belonged to a Dutchman called Monk, and the launch to another called Bobre, and that they also came for the purpose of fishing. Being asked if he knew whether there were any Dutchmen buying poitos, and in what places they were to be found, he replied that he knew there were four Dutchmen in the Creek of Barima, with a number of Carib Indians, carrying on this traffic; that they were from the Colony of Surinam — ”

the Tribunal will appreciate the importance of the point I made some time ago as to the places these Dutchmen came from —

“ and that it was impossible for a large vessel to enter the part of the said creek where these traders were as it was much higher up and very narrow, and that this is what he knows in reply to the questions. ”

Then on the preceding page, 194, there is another important declaration. I begin to read opposite E. This is the declaration of a half breed.

Lord Russell. — That part is the same as the previous part; the bottom part is the only difference :

“ And that the Dutch buyers of poitos were not from the Colony of Essequibo but from that of Surinam because the Governor of Essequibo did not allow any Dutchman to go and conduct this traffic. ”

Mr Mallet-Prevost. — Precisely. And that certainly shows the relation of the Essequibo colony at this time to this region. Whatever the presence of those Dutch slave raiders meant there at that time it meant that they were not there in the interests of the Essequibo colony and were there directly against the orders of the Essequibo Governor. We have the confirmation of all this in a letter from Gravesande himself, from which I shall read a passage at page 199 of this volume and I call attention to that passage beginning just below B ;

“ I am also informed on very good authority that the canoes were taken by an armed boat, commanded by Captain D. Flores, who was sent out expressly to catch the Surinam rovers in Barima, and who captured everything that came in his way, which, so I am informed, did not bring him too much credit. That trade is now at an absolute standstill. ”

That passage I shall read in connection with trade.

Now in 1764 there is another incident in the 3rd volume at page 114 C. That is a passage which I have already read and which I shall not re-read but which relates to the order given, a letter from the Essequibo Governor to the Governor of Surinam with regard to not mentioning the Barima and with regard to Surinam traders not remaining in the colony but going into the Barima itself, and I want to state that this is the only evidence that there is of any Dutchmen in the Barima in the year 1764.

In the year 1766 we come to the history of another so called Dutch settlement in this region and I first want to read the account of that settlement which Gravesande himself gives at page 131 of Volume III, just below D :

“ I shall write to the Governor of Orinoco concerning the state of affairs in Barima, which would become an absolute den of thieves, a rag tag and bobtail party of our colonists staying there under pretence of salting, trading with the Indians, and felling timber, etc. They live there like savages, burning each others huts and putting each other in chains, and I fear that bloodshed and murder will come of it. ”

That is the Dutch settlement which is today alleged as the basis of Dutch title.

Lord Russell. — You had better read the next passage.

Mr Mallet-Prevost. — Well the next passage is pertinent also, I was going to read it in another connection.

“ The west side of Barima being certainly Spanish territory (and that is where they are), I can use no violent measures to destroy this nest, not wishing to give any grounds for complaint ; wherefore I think of proposing to the Governor (who is daily being more highly praised for his friendliness to all for-

eigners) to carry this out hand in hand, or to permit me to do so, or, as and in what manner he shall consider best. ”

When the Attorney General was dealing with this incident, and in answer to a question from the bench said that Gravesande meant the Amacura, he was mistaken in taking that position and I shall show that from the account of Van Rosen’s trial. This is the account of Van Rosen’s arrest, at page 132, at the top of the page. ”

“ I charged the Postholder of Moruka, when he came to see me whilst I was in Demerary, to proceed thither in order to prevent all further mischief, and, in case matters were really so bad, to order the evil-doers to come to the fort.

On his arrival there he found poor Thomas Adams bound fast to a tree with a chain, and nearly dead, having been thus kept for over three months by Jan Adolph van Rose. Had the postholder come three or four days later the man would certainly have been dead. Having unbound him and placed him in a boat, the postholder went to Rose and communicated to him my orders to come to the fort; this he not only refused to do, but when the postholder said that he must come, he seized a sword and a blunderbuss loaded with five bullets, intending to shoot him down, but the newly-appointed postholder of Cuyuni, who was present with one of his assistants, rushed upon him, tore the weapon from him, and took him to the boat. He was brought here yesterday. Adams has been taken to the hospital and Rose to the fort. I shall have inquiries made into the matter as soon as possible, and will have the culprit brought before the Court on the 5th May.

Then.

“ J. A. van Rosen having been brought before the Court, it was found that he had suspected Thomas Adams (who was having some cedar wood cut in Barima on behalf of Mr J. Knott) of having during his absence set fire to his house. He had thereupon made a violent attack upon him, had laden him with chains about his neck, arms, and legs, and kept him rivetted to a post for about three months, feeding him daily with a little cassava and water, having carried all his property to his own place, and committed many other un Christian and brutal acts. ”

All this account is very pertinent as showing the condition of this settlement and what it was.

“ After all had been carefully inquired into, I demanded that the said Rose should be taken to the place where capital punishment is usually carried out, and should be severely flogged there, and should be further banished for ever from the Char-

tered Company's territories, which demand was mitigated in so far that the Court condemned him to be publicly exposed under the gallows for one hour with the rope about his neck, and to be banished for ever, and to pay such costs, etc., a sentence much too lenient for such a villain, who had behaved very badly the whole of the time he was in the Colony, and who is said to have been banished from Surinam.

The Court made a further order forbidding anyone to stop in Barima. ”

The President was good enough, if not to call attention to this passage, to one along the same line a few days ago and I certainly rely upon this very much as to any subsequent events in Barima. It was an order that was referred to the home authorities and confirmed and approved by the West India Company and therefore if any Dutchmen went into this region they went there in direct violation of the order of the Essequibo authorities and without any authority from the Government :

“ The Court made a further order forbidding any one to stop in Barima, and charged the Postholder of Moruka to see that this was carried out, because in time this would become a den of thieves, and expose us to the danger of getting mixed up in a quarrel with our neighbours the Spaniards.

I send off today an order to the Postholder of Moruka to come and answer certain accusations made against him, to the effect that he saw and let depart from Moruka before his eyes certain Spaniards who had stolen from here a negro of Mr Persiks, ”

and so on.

Now certain evidence was taken upon the trial of Van Rosen which clearly shows where the arrest was made and when the so called settlement was established and which therefore corrects the statement of the Attorney General that Gravesande was referring to the Amacura river. The account of the trial is in the Appendix to the British Counter Case, page 215 : I read from the top of the page :

“ When was the first time you visited Roose at Aroeka? ”

I will point out that now on the map (doing so). It is a tributary of the Barima and has nothing whatever to do with the Amacura.

Sir Richard Webster. — It is the left bank.

Mr Mallet-Prevost. — Yes; and this place about which we are now going to read coincides with the site of supposed Dutch remains that are testified to by some of the Indians whose affidavits have been recently collected.

“ When was the first time you visited Roose at Aroeka? —
A. I could not say that exactly. I came from Orinocque, and

met Roose in Carappa, who told me that his house was burnt down, and all his goods and chattels had been stolen. He asked me if in my way I did not see Spaniards on his yacht. I answered in the negative. He requested to go for my corrial which I had brought from the Orinocque and had left on the Frog Island, for which purpose he gave me three bucks. ”

This is the evidence of a Spaniard, one of the settlers there. We shall see that another was an Englishman, another was a Dutchman and yet this is put forward today as proof of a Dutch settlement.

“ He requested to go for my corrial which I had brought from the Orinocque and had left on the Frog Island, for which purpose he gave me three bucks. I found there Jan Thomas Adams with irons round his legs, fastened with a chain round his neck and arms, ”

and so on. And then lower down,

“ Seeing that, the English sailor said to Roose, ‘ Don’t do that, Roose. ’ Roose answered, ‘ Let me do it to that knave. ’

Did you not ask Roose why Adams was chained up in that way . . . ? — A. Said, ‘ Yes; ’ and was told by Roose that Adams was one of those knaves; ”

then lower down;

“ Did not Roose say anything to you? — A. Yes; he said ‘ It is nothing as yet; he is a vagabond. I expect an English captain, with whom I will send him away, but I am not going to send him to Essequibo. ’ That he repeated several times. Whereupon Adams said, ‘ Please send me as soon as possible to Essequibo, ’ to which Roose replied : ‘ Let the captain come, and then shall I send you away, but not to Essequibo; ”

and then lower down,

“ Have you not seen Christaan Winding and (Mr Williams)? — A. Yes, at Adams’ place, when I was returning from Dimmerary. Mr Williams told me that he had come to establish a place in partnership with Adams, but that he had heard that Adams was in irons at Roose’s. And it appeared that Williams was very much grieved about that, and said, ‘ I cannot believe that Adams could have done such a thing. ”

We have here clearly the proof of the fact that this settlement was no anywhere near the Amacura as suggested by the Attorney General and we have also divulged the full character of it. It might be well for me at this point to make clear how Gravesande regarded this region and how confused the Amacura and Barima are in D’Anville’s map, which was the source of Gravesande’s belief as to the geography of this region. There

are two maps and both, so far as the coast region is concerned show the same thing. I will refer the Tribunal to the one which is on the larger scale, map No 23 in the British atlas. The line that is here laid down by D'Anville was the line from which Gravesande as I shall later show obtained his notions of boundary and the line described in the Dutch remonstrance of 1769 when a territorial claim was made leaves the coast to the east of the mouth of the Orinoco what would be Point Barima and it leaves on the west entirely both the Amacura and Barima. The Amacura is put to the east of the Barima, wrongly, of course, but it is given as a very insignificant little stream and the Barima is also brought as touching the boundary. So that in view of this map it is very easy to understand that when Gravesande was saying "As far as the Barima" he did not mean the Amacura as we know it now but the Barima as appears on this map. In other words he did not have to cross one river to get to the other.

Now with the knowledge that we have of this geography, leaving any places there and going westward which would cross the Waini and then the Barima and then come to the Amacura, on the map of d'Anville anyone leaving the Pomeroon would reach the Barima without at all encountering the Amacura. In other words, to Gravesande's mind the Barima was the river that lay next to the Waini.

When we keep in mind the records of this trial of Van Roosen and what was done and have in mind this map as being what Gravesande knew of this region it is very easy to understand what his views were. Before leaving the Counter Case Appendix there is another passage at page 210 which supports me in the statement I made a moment ago that there were three Spaniards in this so called settlement. Of course I do not claim on that account that it was a Spanish settlement, but I do claim that it is impossible to speak of it as an Essequibo Dutch settlement.

Sir Richard Webster. — We have never said so. You have said so four times; we have produced this for Dutch control, not settlement, as you will see from my speech on our case.

Mr Mallet-Prevost. — In view of what the Attorney General said —

Lord Russell. — We have not got to control yet.

Mr Mallet-Prevost. — No; but I beg to differ from the Attorney General. It is presented in the British Case as a settlement, and I read from page 51 of the British Case where it says

"There is little doubt that at this time there were Dutch plantations in the Aruka."

That is a settlement. I do not wonder when these facts are brought out the Attorney General does not like to admit that these are allegations of settlement. I will read from the British Case as that shows the position taken by the Government in this case.

"There is little doubt that at this time there were Dutch plantations in the Aruka, a tributary of the Barima."

I call the attention of the Tribunal to the fact that a lot of affidavits have been presented to show Dutch remains here, and that means remains of settlements.

“ There are still visible traces of settlements at these spots, and they correspond with the description given of Dutch settlements. ”

Will the Tribunal look at those words !

“ Of Dutch settlements then existing in the records of secret expeditions made by the Spaniards to the Barima in 1760 and 1768. In the latter year the Spaniards secretly and without previous complaint made a raid upon Barima and destroyed a Dutch plantation, which was probably in the Aruka, but they did not themselves hold or occupy the district of the river. ”

If words mean anything, Great Britain is there bringing forward this among others as a Dutch settlement, and as I said before I do not wonder when the facts are fully developed that the Attorney General is himself somewhat surprised that his Government should have taken this position, but I have but been reading the words which support me in my contention. There is another passage in the British Case at page 48 where this statement is made.

“ In 1766 and 1768 Dutchmen were settled in Barima. ”

I suppose that is a settlement, and when that is put forward as a settlement I suppose that settlement is to be taken as serving as a basis of title to this region.

“ In 1769 the Prefect of the Missions reported that a Dutchman had been eight years domiciled in the River Aguirre. ”

That is another point, but there is the statement in 1766 and 1768 Dutchmen were settled in the Barima. If the Attorney General wants now to counter on that statement in the British Case and say it is not a Dutch settlement I am ready to accept it.

Sir Richard Webster. — I want nothing of the kind. The facts are as I stated them.

Mr Mallet-Prevost. — I am not through with this yet.

Lord Russell. — By a long way, I fear.

Mr Mallet-Prevost. — I meant on this particular incident, my Lord. I have read from the judgment of the Court and stated that the action of the Court in forbidding settlements in the Barima was approved, and I will give that reference now without reading it, and it appears on page 137 of the third volume of the British Case Appendix opposite B and C and then comes the passage in this connection which the Lord Chief Justice of England asked me about. This is the passage which fixes the location where this happened. There is a passage which the Lord Chief Justice

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"There is little doubt that at this time there were Dutch plantations in the Aruka, a tributary of the Barima."

I call the attention of the Tribunal to the fact that a lot of affidavits have been presented to show Dutch remains here, and that means remains of settlements.

“ There are still visible traces of settlements at these spots, and they correspond with the description given of Dutch settlements. ”

Will the Tribunal look at those words !

“ Of Dutch settlements then existing in the records of secret expeditions made by the Spaniards to the Barima in 1760 and 1768. In the latter year the Spaniards secretly and without previous complaint made a raid upon Barima and destroyed a Dutch plantation, which was probably in the Aruka, but they did not themselves hold or occupy the district of the river. ”

If words mean anything, Great Britain is there bringing forward this among others as a Dutch settlement, and as I said before I do not wonder when the facts are fully developed that the Attorney General is himself somewhat surprised that his Government should have taken this position, but I have but been reading the words which support me in my contention. There is another passage in the British Case at page 48 where this statement is made.

“ In 1766 and 1768 Dutchmen were settled in Barima. ”

I suppose that is a settlement, and when that is put forward as a settlement I suppose that settlement is to be taken as serving as a basis of title to this region.

“ In 1769 the Prefect of the Missions reported that a Dutchman had been eight years domiciled in the River Aguirre. ”

That is another point, but there is the statement in 1766 and 1768 Dutchmen were settled in the Barima. If the Attorney General wants now to counter on that statement in the British Case and say it is not a Dutch settlement I am ready to accept it.

Sir Richard Webster. — I want nothing of the kind. The facts are as I stated them.

Mr Mallet-Prevost. — I am not through with this yet.

Lord Russell. — By a long way, I fear.

Mr Mallet-Prevost. — I meant on this particular incident, my Lord. I have read from the judgment of the Court and stated that the action of the Court in forbidding settlements in the Barima was approved, and I will give that reference now without reading it, and it appears on page 137 of the third volume of the British Case Appendix opposite B and C and then comes the passage in this connection which the Lord Chief Justice of England asked me about. This is the passage which fixes the location where this happened. There is a passage which the Lord Chief Justice

of England read at page 131 of the third volume of the Appendix to the British Case.

“ The West side of Barima being certainly Spanish territory (and that is where they are), I can use no violent measures to destroy this nest, not wishing to give any grounds for complaint; wherefore I think of proposing to the Governor (who is daily being more highly praised for his friendliness to all foreigners) to carry this out hand in hand ; ”

In other words here we have a statement by the Dutch Governor in the year 1766 when all this testimony had been taken on the trial and he knew what the settlement was, and where the settlement was located, and he says that settlement was on Spanish territory, and in view of that fact Her Majesty's Government are here today bringing forward that settlement to prove that it was Dutch territory.

Lord Russell. — It may be so, I did not so understand it.

Mr Mallet-Prevost. — I do not know to what other interpretation the language of the British Case is open. This settlement is relied upon by Great Britain to establish a Dutch title; it is stated it is a Dutch settlement.

Lord Russell. — You have read passages which warrant you in saying that there are allegations in the Case of settlements in the neighborhood of the Aruca and Barima. This one upon the west bank of the Barima is distinctly said not to be Dutch at all; on the contrary the Governor is repudiating any jurisdiction to interfere with the trouble going on there, on the ground it is Spanish.

Mr Mallet-Prevost. — The statement in the British Case distinctly refers to this statement, to this year, 1766, it presents that settlement to-day as a basis of Dutch title.

Lord Russell. — You may be right, I did not so understand it.

Mr Mallet-Prevost. — Will your Lordship look at page 51 of the British Case, which I read before.

“ There is little doubt that at this time there were Dutch plantations in the Aruka. ”

That was where the evidence showed this was.

Lord Russell. — I do not gather that is where the Spaniards were on the west side of the Barima.

Mr Mallet-Prevost. — Precisely the same. The Aruka is on the Spanish side of the Barima at this time according to Gravesande's view at that time. He was recognising the settlement such as it was which was on the Aruka as a settlement on a Spanish territory, and now I say that Great Britain in her Case is referring to that settlement and presenting it here and alleging it as a basis of title.

Chief Justice Fuller. — Well, they disclaim it.

Mr Mallet-Prevost. — I asked the Attorney General to disclaim it; he declined to do so.

Sir Richard Webster. — I do not disclaim the Aruka settlement. I say my learned friend unfortunately has not understood the territory to which Gravesande was referring. I say distinctly that this was a positive exercise of criminal jurisdiction over Van Roosen in respect of Dutchmen, west of the Barima.

Mr Mallet-Prevost. — I would be glad to cede the floor to the Attorney General and let him point out where this settlement was in 1766. Will the Attorney General kindly do it, because I should like to meet him right here.

Lord Russell. — You are entitled to ask but not to call for an answer.

Mr Mallet-Prevost. — No; but I am entitled to draw inferences if none is forthcoming.

The year is given and the place is given and I show the circumstances in relation to that place and to that year, and now if there is another settlement I would like to know where it is.

Lord Russell. — Do not pause too long for a reply.

Mr Mallet-Prevost. — Now with regard to what the Company have to say upon this matter I refer to page 137 of this same third volume. Of course this was all reported by Gravesande to the Company as I have shown, and this is what the Company have to say in answer. I read from A and B.

“ But in one of your preceding letters you told us that the place about the Barima, where some scum and offscourings of folk were staying together and leading a scandalous life, was Spanish territory, and that you intended to have Mr Rousselet, who was going on a mission to Orinoco submit some propositions to the Spanish Governor for the extirpation of that gang. And now you inform us of your having sent thither the postholder of Moruca with positive orders, probably *propria autoritate* without any concurrence of the aforesaid Governor, inasmuch as Mr Rousselet had not yet departed thither on his mission, and we cannot quite make this tally with the other. If that place is really Spanish territory, then you have acted very imprudently and irregularly; and, on the contrary, if that place forms part of the Colony, and you had previously been in error as to the territory, then you have done very well, and we must fully approve of your course, as also of the Court's Resolution that henceforth no one shall be at liberty to stay on the Barima.”

And then we have what Gravesande has to say in answer to that which explains where it was made, and his answer is on page 141 of the same volume.

“ Concerning the matter of Barima and the case of Rose, I shall have the honour to inform your Lordships that we, as well as the Spaniards, regard the River Barima as the boundary

division of the two jurisdictions, the east bank being the Company's territory, and the west bank Spanish.

Fearing, however, because there is a dearth of competent and discreet persons, and because the work was getting as dangerous for the Spaniards as for us — fearing, I say, that my envoy would also come to the west bank, I have in two consecutive letters given the Governor of Guayana a circumstantial account of the matter, and asked him to send some men to help us clear out this nest.

His Honour did not answer those letters, but sent me a verbal message by Vicente Franco, one of the principal colonists of Guayana, that it was impossible for him to send men on account of the great distance and the lack of boats, etc., and that the best thing would be to let those evil-doers fight it out. ”

I shall show, by and by, whatever truth there may be in that statement, that is not what the Spanish authorities did.

Sir Richard Webster. — You have got my answer now.

Mr Mallet-Prevost. — I am glad I have. I will call attention to one or two other passages perhaps you would like to explain. In 1768 the Spaniards did send another expedition and it proves either the report of Gravesande was incorrect or that if correct the Spanish authorities changed their mind for they sent an expedition and cleared that out. But let me read on ;

“ Thereupon I sent the Postholder of Moruka my orders, but was careful to charge him to avoid the Spanish bank, but that he was not to avoid the islands lying in the river, because these were uncertain territory. He followed my orders faithfully, Rose having been apprehended on our shore. ”

Now if the Attorney General wants to present that as the exercise of jurisdiction on the other side of the Barima he can have it for what it is worth.

Sir Richard Webster. — It is west of the Barima unquestionably.

Mr Mallet-Prevost. — I think it is clear enough the other way. It does not require any argument. He then goes on to answer the Company.

« I am fully acquainted with the rule, *Extra territorium suum jus dicenti enim impune non paretur* ; but it is not applicable to the Resolution of the Court in this matter, because —

1. The east bank being in our jurisdiction, the Court can enforce its order there. »

I suppose the Attorney General says that is west.

Sir Richard Webster. — No, I Say it is the east bank.

Mr Mallet-Prevost :

“ 2. Because I think that the Court certainly has the power

to forbid its citizens and colonists to go to any places when such is considered to be inexpedient or dangerous for the Colony. ”

There, Mr President, is the very essence of all the jurisdiction that was exercised by the Dutch Governor in these quarters. It was personal jurisdiction over Dutchmen. Here is the Dutchman explaining it; he does not care where they go, and that is the answer he gives the West India Company when the Company complains possibly he has gone beyond his limits.

Lord Russell. — I do not think you do Gravesande justice. I think in these two propositions he states quite accurately and quite rightly the jurisdiction; he says,

“ The East bank being in our jurisdiction we can make any order we like as regards that, but as regards any place not in our jurisdiction we can only act and legislate so as to bind our subjects. ”

Mr Mallet-Prevost. — That is the point I endeavoured to make. If I have not made it, it is my fault. Your Lordship has exactly put the position. The Attorney General claims that this action by Gravesande shows Dutch authority on the west bank. I say that this distinctly contradicts it; that is the point that I am making. There is the Aruca; he says the settlement that was on the west side of the Barima was on Spanish territory. He says the arrest was on the east bank.

Sir Richard Webster. — He does not say anything of the kind.

Lord Russell. — It seems to me the point is a very small one.

Mr Mallet-Prevost. — It seems to me it is very important when brought forward by Great Britain as a basis of her title and as to the question of exercise of jurisdiction and political control.

(Adjourned till tomorrow at 11 o'clock.)

TWENTY-FIRST DAY'S PROCEEDINGS AUGUST 1 1899

The President. — Mr Mallet-Prevost, the Tribunal is ready to hear you.

Mr Mallet-Prevost. — Mr President, I concluded yesterday my examination of the evidence with regard to the alleged Dutch settlement in the Barima in the year 1766, and I propose this morning to call attention to another alleged Dutch settlement in the year 1768. I use the words “alleged Dutch settlement” advisedly, because in the very passage which I read yesterday from the British Case, the allegation is made that there was a Dutch settlement in the year 1768 and I shall show in connection with the evidence that I have to examine upon that point that settlement is, by the British Case itself, identified with a place called Koriabo, where the affidavits of Indians and others that form a part of the testimony in this case speak of the existence of Dutch remains. I invite the attention of the Tribunal to a passage in the third volume of the Appendix to the British Case, which introduces us to this subject.

Lord Russell. — This is to negative the suggestion of a settlement where?

Mr Mallet-Prevost. — It is alleged to have been in the Barima, my Lord.

Lord Russell. — Then it is to negative that suggestion?

Mr Mallet-Prevost. — It is, my Lord. This is in the third volume, at page 170 : An expedition was sent out in the year 1768, under Captain Francisco Cierro for the purpose of clearing the Barima of foreigners, and I call attention to the fact that the sending of this expedition by Spain in the year 1768 negatives and contradicts any inference which might be drawn from the statement of Gravesande a year or two before to the effect that Spain had declined to exercise any jurisdiction in that region and had stated that it was too far off for her to do anything. The statement of Gravesande in that connection which I read yesterday was, as the Tribunal will remember, based entirely upon the oral statement made to him by a messenger that he sent and not upon any written document issuing from the Spanish authorities.

We have here, in the year 1768, an account of an expedition which is clearly an exercise of jurisdiction in this region, and I read first from the Declaration of one of the witnesses giving an account of what was done. I read from opposite letter D :

“ On the 18th April 1768 : We, Don Manuel Centurion Guerrero de Torres, Captain of the Royal artillery Corps, Commandant-General of this town of Guayana and its province, and Don

Andres de Oleaga, sole Royal Accountant therein; in continuation of what we have ordered in the “ Auto ” made on the 9th of the current month, being in the tribunal of this command, have caused to appear before us Don Francisco Cierito — ”

he was the Leader of this Expedition —

Captain of the Company of Pioneers, and consequently of the coast-guard which protects the ports of this said province, who was admitted upon oath which he made by God our Lord and a sign of the Cross, under obligation whereof he promised to God and the King to tell the truth so far as he might know and might be asked, and having been questioned according to the tenour of the foregoing and above mentioned “ Auto ” he declared :

That the Commandant-General there present having received information that in the creek called the Creek of Barima ” —

and, by the way, I call attention to something here which is really not of very great importance, but it occurs throughout namely this translation of the word “ Creek ”, which in the opposite column is the word “ Rio ”, which means river. Whether it is intended to belittle the river itself or not, I do not know, but I call attention to the fact that it is constantly translated so in the British Case Appendix —

“ which is close to the great mouth of the River Orinoco and falls into it, sundry Dutch families were established, dispatched him with instructions to warn them once, twice, and thrice to quit the whole of that territory because it belonged to the said province, in virtue whereof the Declarant went in his vessel ” —

Lord Justice Collins. — Is not the word that is translated Creek, “ caño ” in some places !

Mr Mallet-Prevost. — Yes ; in some places it is “ caño ” and in some it is “ rio ”.

Lord Justice Collins. — But in some places it is “ caño ”.

Sir Richard Webster. — In the present case, it is “ caño ”.

Mr Mallet-Prevost. — Yes, under letter E on that page.

Mr Justice Collins. —

“ That in the creek called the Creek of Barima, which is close to the great mouth of the River Orinoco ; ”

the Spanish word used in that sentence is “ caño. ”

Mr Mallet-Prevost. — Yes, my Lord. The words “ Rio Orinoco ” struck my eye at the time I mentioned it. It is in some cases “ caño ”, and in some “ rio ”, but I do not think there is a single instance in which

the Spanish word for "Creek" is used. "Caño" of course is not properly translated "Creek."

Sir Richard Webster. — What is the meaning of "caño?"

Mr Mallet-Prevost. — "Caño" is a canal. It is a word which is used in connection with, for instance, the passage there. It applies to more than a mere creek.

Sir Richard Webster. — I am told, Mr Mallet-Prevost, but you know better perhaps, that the word they use there in Spanish means the Creeks of Rivers. I am told so by Spanish scholars. There is no intention of belittling the Barima at all, but I am told that that is the word that is always used in all Spanish Literature for the Creeks of a River.

Mr Mallet-Prevost. — I think that is a mistake, Sir Richard; and they use words that at times are used here. There is one that I have in mind, through I cannot actually recall it at this moment, but it is used to indicate a small creek.

Lord Russell. — It is not really worth dwelling upon.

Mr Mallet-Prevost. — No, my Lord, I only mentioned it in passing.

Lord Russell. — Here, in this instance, the Spanish word is "Caño?"

Mr Mallet-Prevost. — Yes, caño.

"In virtue whereof the declarant went in his vessel, with another accompanying him, in search of the said creek, and having arrived at the mouth he saw several Indians of the Carib nation, and these, before the declarant could reach the establishments and farms of the said foreigners, gave them intelligence, and thereupon they took to flight without giving an opportunity for the notification; and they only found the deserted houses and the effects, implements and utensils contained in the inventory, which they put on board the two vessels and then set fire to the said houses, in order that they should not form settlements in future, and destroyed the farms as far as they possibly could. And this is all that happened, and that he can declare under obligation of the oath which he has made."

Then at page 167 is the Auto or the order of the Court directing the sale of the effects which were taken. I read from opposite letter C:

"Having seen the entries contained in the foregoing inventory of articles which the coast-guard vessels of this said Province under the Captain of the Company of Pioneers, Don Francisco Cierro, seized in the Creek of Barima from the foreigners who had established themselves clandestinely in the said creeks, for trade and exportation of woods and other products. Wherefore we had to order, and do order, that, being for the greater part spoiled from exposure to damp, they be sold —"

and so on. Then at page 168 is the notice of the sale with some further

repetition of the same statements, and a distinct assertion as in some of the preceding documents of jurisdiction over Barima. Then at page 169 is the account of the sale itself, and at page 173 is the final *auto* or order in connection with this matter. From this final *auto*, I will read a brief extract :

“ Having seen these “ Autos ” and the result of the four declarations therein, and whereas the Dutch have unwarrantably sought to take possession of the territory of Barima, jurisdiction of this province, where they had established farms and houses to carry on the exportation of woods and other products in a clandestine manner, for which purpose, according to information received, they had likewise gathered together certain runaway slaves, fugitives from the provinces of Cumaná and Carácas, to act as pilots, and point out the lawless Spanish subjects who only occupy themselves in carrying on clandestine exportation along the creeks and landing-places which are out of the way and unknown. ”

Perhaps I may point out, just in passing, that is pointing to the fact that, whatever this gathering may have been, it was a gathering not only of Dutch but of Spanish subjects who carried on this clandestine exportation.

“ Wherefore, and also seeing that by various laws, and the most recent “ Cédulas ” issued by His Majesty, it is forbidden under any pretext whatsoever to suffer or permit foreigners to exercise the freedom of establishing themselves in these dominions by establishing new colonies, considering the importance thereof, and the repeated pragmatic Cédulas which prohibit it, we have had to declare and do declare that the said Dutch by the crime they have committed, and the penalty they have incurred, must forfeit the implements and other things which they were found to possess, and which were brought by the Captain of the coast-guard vessels, and that they be devoted to the Royal Treasury ; ”

and so forth.

It would be impossible, Mr President, to find a record where the authorities, acting as these authorities did, expressed more clearly the fact that they did so in the exercise of what they believed to be their rights and in the exercise of jurisdiction. And we have here one, and there are many others to which I shall in time call attention, of the acts of Spanish control to which I appeal, and it is a control not against Indians, it is a control not against Spaniards, although there were Spaniards there, but it is a control exercised against the Dutch in Barima, and it is exercised upon the allegation of jurisdiction and of right to exercise that jurisdiction there. There is not in the whole evidence before this Court a single instance where any Dutch authority was exercised against Spaniards in these regions.

I have spoken of this as an alleged Dutch settlement, and in that connection, I desire to call attention to the same allegation of the British Case which I read yesterday, and which is to be found on the 51st page of the British Case as follows :

“ There is little doubt that at this time there were Dutch plantations in the Aruka, a tributary of the Barima, and at Koriabo — ”

and I said I would identify this plantation of Koriabo from the statements in the British Case itself —

and at Koriabo higher up on the Barima. There are still visible traces of settlements at these spots and they correspond with the description given of Dutch Settlements then existing in the records of secret expeditions made by the Spaniards to the Barima in 1760 and 1768. ”

The other plantation of Aruka I identified yesterday. We have here the statement that Koriabo is the other site of the settlements in the year 1768. Then,

“ In the latter year the Spaniards secretly and without previous complaint made a raid upon Barima and destroyed a Dutch plantation, which was probably in the Aruka, but they did not themselves hold or occupy the district of the River. ”

But in view of the identification which we have made of Aruka with the previous settlement it is clear that the settlement of 1768, if it was not the Aruka one, could have been no other than the Koriabo one. It was one of those two, and those are the only two places, as I shall show when I come to deal, by and by, with the affidavits of living witnesses, where there is any reason to believe that there are existing evidences of Dutch remains. Who those people were, that were driven out of the Barima at that time, it is impossible for us definitively to say, because there is no direct evidence upon that point, but there is one passage to which I desire to call the attention of the Tribunal which points very clearly to the fact that they were probably English from Barbadoes and not Dutchmen at all. Possibly some Dutch may have been there, but certainly there were others there besides Dutch. I refer to a note which is in the Venezuelan Counter Case the first volume, at page 45. It is a foot-note by Professor Burr, but I cite it at this point in view of the fact that he quotes from a Spanish document, and it is to that Spanish document that I desire to refer. I read from the bottom of page 44, the note :

“ The Spanish testimony to this exploit speaks of sundry Dutch families and of the foreigners, and mentions the houses and plantations as if there were several establishments. But, had there been any other settlers from Essequibo, it seems prob-

able that Storm would have learned it, if only from the widow La Riviere — ”

I will mention La Riviere in a moment in connection with this matter —

and would have mentioned it to the Company. It is possible that the other settlers, if such there were, were from other Colonies, — not improbably French or English from the islands. ”

And now I come to his reference to the document :

“ In the library of the British Museum, in that volume of the Egerton manuscripts calling itself *Papeles Tocantes a la Provincia de Venezuela* — ”

giving the volume and the page —

there is a copy of a letter addressed by Andres de Oleaga — ”

And I call attention here to the fact that Oleaga was one of the Spanish officials at Santo Thomé who signed the papers that I have read to the Tribunal this morning, the orders of sale and the other records of the proceedings —

contador of Guayana, to Josef de Abalos, Intendente of Caracas, which seems to throw a light on this. It contains this passage : Covetous of this spacious and attractive territory on the banks of the river Barima, the English of Barbados, united with the Dutch of Essequibo, established a colony, and in the year 1778 were dislodged by action of this government through the agency of the privateer boats of this place ; and, in spite of the watch which has been kept, the English have continued to make great ravages on the timber. ”

Now below that is this, which seems to me a perfectly justifiable comment upon the date of this document :

“ Now 1778 is here a quite impossible date ; for the letter itself, though misdated 1777 (November 15), is an answer to one of August 14, 1778, and must have been written before the end of that year. Inasmuch as the Spanish purging of the Barima in 1768 answers so perfectly to the description in this passage, while none of 1778 is known from the records it seems a fair conjecture that 1778 is here but an error for 1768, and that the other settlers then ousted from the Barima were therefore English ”.

And then Burr points out what I have just stated,

“ that Oleaga was likely to know whereof he spoke will

appear from the fact that it was precisely he, who in 1768, as Royal Accountant in Santo Thomé, received and invoiced the confiscated property ”.

Against this sale of what was supposed to be the property of Dutchmen there was absolutely no protest on the part of the Dutch, and in that connection I want to call attention to one or two statements of van s' Gravesande's, the first of which is in the third volume of the Appendix to the British Case at page 176. I will say in explanation of La Riviere and I think that the President was good enough to call my attention the other day to La Riviere, La Riviere was a resident in the Colony of Essequibo, who upon the death of one Erasmus Velderman, who had permission to dwell in the Pomeroon attempted to succeed to the rights of this Velderman in the Pomeroon. He failed in this and he then went to Barima against the direct prohibition of the Company to which I referred yesterday against anyone settling in the Barima. He died in the Barima, and his widow remained there, and she was undoubtedly one of those that was driven out of the Barima by this Spanish expedition of the year 1768; and this is the statement in that connection which is made by van S' Gravesande on page 176, opposite to letter B :

“ I should otherwise certainly have sent reinforcements to Moruka, because our rascally deserters have arrived in Barima with a few Spaniards and have robbed the widow La Riviere of all her slaves and property ”.

That is the way in which van s' Gravesande sees fit at that time to refer to this expedition but he goes on and says :

“ This did not matter very much, because I had strictly forbidden Jan la Riviere to settle between Essequibo and Orinoco, and for greater security I had this inserted in his pass; he was also forbidden by the Court to settle in Barima ”.

So that whatever settlement there might have been there by La Riviere, he appears to have been the only Dutchman there from Essequibo or from anywhere else. It was, as I pointed out yesterday, directly in opposition to the orders of the Company. Now in the 4th volume of the Appendix to the British Case there is a further statement in the same connection by van s' Gravesande. I read from page 12.

Lord Russell. — It is odd that he should have confounded an act of some rascally deserters, with a few Spaniards with them, who have robbed the widow of her slaves and property, — that he should have confounded a transaction of that kind with an act which you say was legally done under Spanish authority, and which resulted in a judicial confiscation of goods.

Mr Mallet-Prevost. — I have presented the proof of what I have alleged, my Lord; about that there can be no doubt. The proof is not only

presented by me, it is in the British Case itself. Van s'Gravesande may have been ignorant of that fact and have taken another view; the only inference I can draw from that is he was ignorant of what was passing in that region. It proves the little he knew of what was going on there. The fact your Lordship has called attention to is significant and the significance is in the direction I have pointed out. At the top of page 12 in the fourth volume we have this statement :

“ Jan La Riviere (the same who, against the absolute prohibition of the Court, had gone with his slaves to live in Barima, and, he having died there, the Spaniards have robbed his widow of everything, she having now returned again to this Colony); ”

and as I say there was no protest by the Dutch against such action by Spain.

Lord Justice Collins. — One explanation of that would be if he did not know it was done by Spain — if Gravesande did not know it was done by Spain — he, being the person to remonstrate, would not have remonstrated.

Mr Mallet-Prevost. — And the explanation I have given would be he did not know what was passing in that region. While that is probably true when he made the first statement I have read I shall doubt if it is when he made the second statement because by that time the widow of La Riviere came back. He speaks of the attack in a different way; he says the Spaniards had robbed the widow of everything she had; and, as General Harrison very pertinently points out, even if this was the act of private Spaniards and not of Spanish authorities, if Gravesande believed he had any rights in that region it would certainly have been his right to protest against any such acts of the Spanish authorities. That is all that there is in reference to this alleged Dutch settlement of the year 1768; and this settlement is also brought forward today by Great Britain as a basis of title to that region as I pointed out yesterday in reference to the Aruka settlement. I pass now to the year 1769 and I want briefly to refer to an expedition which the Prefect of the missions sent in that year, and I want to refer to it because it shows, in 1769, this expedition which passed through the Barima and through this region found no Dutch settlement there. In the fourth volume of the Appendix to the British Case at page 19 we find the document to which I have made reference in this connection :

“ I, fray Benito de la Garriga, Prefect of the Missions of the atalonian Capuchins of the Province of Guayana, most humbly and reverently, and with profound respect, represent and make known to your Majesty that some Aruaca and Guarauno Indians, having fled from our Missions of Piacoa and San Joaquin, I sent two missionary Fathers to find them; and they went with an escort of soldiers and a launch, together with some other

assistance, which your Commandant-General, Don Manuel Centurion, gave me, as he is accustomed to do.

They entered the Orinoco by the Barima and reached the savannah which extends between the Rivers Wayne and Moruca, and which, as I understand, is territory under the jurisdiction of this province.

The missionaries there collected 140 Indians, including maroons of the said villages, and other Gentiles. ”

I call attention in passing to the fact which I shall have occasion to enlarge upon later that one of the uses which Spain made, not only of this Barima region but of large tracts of territory in the interior which were not under actual settlement by Spain was taking from and civilizing them in her missions :

“ And they found in the power of the Dutchman, living in the Post of Moruca, three Indian women with their children, whom he had enslaved and taken from the mouths of the Orinoco, as they explained to us, and from the River Massaruni. These the religious took away together with others above mentioned, without violence or causing any injury to the Dutch. ”

Lord Justice Collins. — What are maroons?

Mr Mallet Prevost. — I do not know.

Chief Justice Fuller. — They are exiles, I think.

Sir Richard Webster. — They are bush negroes.

Mr Mallet Prevost. —

“ And now the Governor of Essequibo finds in this a motive for complaining of your Commandant-General, charging him with the infraction of Treaties, outrages, and offences, being indignant because last year the same Commandant-General had dislodged the people whom he kept surreptitiously in Barima; ”

which shows that by that time, Gravesande had knowledge of the Dutch action of the preceding year.

“ The Commandant has replied to him, among other things, that the Fathers did not go by his orders, but by those of their Prefect, as is quite true, although the Fathers did not act well in mistakenly giving to the Dutchman of the Post a paper, in which they stated that they were sent by order of the above-named Commandant, when it was by my order.

I am sure that I should not have complied with my obligations and the duty of my office if I had not sent the said Fathers on that mission, and as to what they have done in bringing the Indians to the Mission, I consider it is quite lawful. ”

This was a statement which the Prefect made to the King and although

it has been intimated that this is to be taken as an admission that Garriga was going beyond Spanish jurisdiction altogether there is in the first place nothing whatever to show that his action in this regard was not approved and in the second place there is distinct evidence to show that at this time and speaking in this connection Centurion distinctly asserted the Spanish jurisdiction and Spanish right up to that point.

Lord Justice Collins. — Is not this in answer to a remonstrance by Gravesande and if so it apparently embraces a remonstrance for the last Spanish action in turning out the settlers in the Barima and —

“ charging him with the infraction of Treaties, outrages, and offences, being indignant because last year the same Commandant-General had dislodged the people whom he kept surreptitiously in Barima. ”

Mr Mallet-Prevost. — There is no evidence of any *such* complaint. There is evidence that in the year 1769 there was presented a remonstrance to the States-General.

Lord Justice Collins. — This letter alludes to a remonstrance evidently :

“ And now the Governor of Essequibo finds in this a motive for complaining of your Commandant-General, charging him with the infraction of Treaties, outrages, and offences, being indignant because last year, ”

which I read before.

Chief Justice Fuller. — At the bottom of page 18 you will see the proceedings of the Zealand Chamber on June 26, 1769, and they had received among letters a letter of the 4th of April which confirmed the undertaking of the Spaniards against two of the Company's posts and so on; and they were laid before His Royal Highness. It may be if we had those they would give the complaint to which Garriga refers.

Mr Mallet-Prevost. — There is this reference as Lord Justice Collins very properly pointed out but there is nothing whatever in the evidence which shows that any complaint was lodged.

Lord Justice Collins. — It is in answer to a charge.

Lord Russell. — It reads like a justification or explanation in answer to some complaint made of what had been done.

Mr Mallet-Prevost. — It is possible that that may have been done. The main remonstrance, the great remonstrance of the Dutch, covering all these points as they were covered, was presented later in this year 1769 and that remonstrance as far as it related to the case was principally due to the interference by Spaniards with the fisheries that were stated to be enjoyed by the Dutch. At that time the limits upon the coast were distinctly stated by the States-General as being those that are laid out in D'Anville's map. While this reference would seem to imply that some previous complaint had been lodged with some one there is no evidence to

show what it was, but it is quite possible it may have been. At page 6 of this volume we have a statement by Storm van s'Gravesande and in this he is referring of course to the coming of the Spaniards to the post at Moruka. I do not know whether possibly —

Chief Justice Fuller. — It is one of the letters referred to.

Mr Mallet-Prevost. — This shows distinctly what it was. It was against their coming to Moruka in 1769; at page 6. If my recollection serves me I do not think it has any reference whatever to the occurrences of the year 1768. I read from page 6, opposite C. The phrase before this is referring to the Cuyuni.

“ But I should as soon have expected heaven to fall, as that they, in so high-handed a manner, openly (as if in open warfare), in breach of the right of nations, in breach of all Treaties of Alliance with his Catholic Majesty, should attack us from another side, and have the audacity to go to work as if they were Sovereigns of this whole coast.

“ The 10th March I received two consecutive letters from Councillor Mr Buisson, which gave me information that an Indian named Adahoure, from Pomaroon, had come to his house and related to him that the Spaniards, with two Capuchin Fathers, a detachment of soldiers, and a large party of armed Waykiers, were capturing and taking away as prisoners all the free Indians between Barima and Pomaroon, and that they had actually overpowered the Company's trading place Marocco, and that they were now there, but that he had as yet no further knowledge of the circumstances. On the 11th came the assistant from Marocco with a letter from the Postholder. From his written Report, copy whereof is here annexed, your Honours will perceive to what pitch the insolence of our neighbours goes.

Your Honours can now see what consequences indulgence and patience have; this causes me no surprise. I have long foreseen and expected it : however, I could not presume that they would have dared to undertake so bold a deed.

The Postholder has behaved himself very well; he did not run away, though they tried hard to make him do so, but remained firm at his post, and asked a certificate from the Capuchin Fathers, which they have given him, much to my surprise, as hereby all denials and evasions were cut off.

Copy of this also goes annexed hereto.

They have captured and taken away all our people that were on the sea-coast. The salter of Luyxbergen has luckily escaped them, but his Indians, his vessels, two large canoes and three single canoes, which he had got by barter, they have taken away. He of Duynenberg returned early in the morning.

The alarm in the river is great. If they come to Pomaroon,

as they have threatened, they can be in three hours overland in Essequibo, and can ruin our lowermost plantations.

May I ask once more whether all this must be borne quietly, and whether your Lordships' patience has not yet come to an end? "

It is clear, it seems to me, from this recital that the complaint which was made by Gravesande and the complaint to which Lord Justice Collins called attention had reference exclusively to this coming of the Spanish missionaries in the year 1769 to the post of Moruca.

Lord Justice Collins. — That does not explain the words,

“ being indignant because the same Commandant General had dislodged the people whom he kept surreptitiously in Barima. ”

Mr Mallet-Prevost. — That may be only the opinion of this writer. We have now the actual letter of Gravesande.

Lord Justice Collins. — That is a letter from him to whom? The letter the writer is dealing with is some remonstrance addressed to the Spaniards as I gather from it.

Mr Mallet-Prevost. — I should think it was to be expected if Gravesande had any complaint to make he would not make any larger complaint than he would report to his own Company. Here we have the letter to his own company and it makes no reference to the year preceding, and I have picked out certain passages in which Gravesande refers to them without implying they were unlawful occurrences. The only Dutchmen carried from that place was the widow of La Riviere. Gravesande refers to that on two occasions and says it did not matter much because La Riviere went there in opposition to the orders of the Company. Now in view of the occurrences of 1768, and in view of his statement in his letter of March 15, 1769, which limits his complaint to the occurrences of 1769, it seems to me that the reference which is contained on page 20, to which Lord Justice Collins has been good enough to call attention, cannot be a reference which is based upon anything which Gravesande himself must have said, but must be the expression of opinion of the person who wrote it, that is to say, of the Prefect. If some complaint was made as to the expedition which went there in 1769, and the Prefect is writing about it, it would be a very natural thing for him to confuse the two expeditions which were so close to each other and to refer Gravesande's complaint to both, when it was only one.

Lord Russell. — Did you say in fact the seizure of the property was of the widow La Riviere?

Mr Mallet-Prevost. — I say it was of all those who were there.

Lord Russell. — Would you mind answering once in a way yes or no? Was it or not a seizure of the property of La Riviere?

Mr Mallet-Prevost. — Yes; and of others, not Dutchmen.

Lord Russell. — How does it come her name is not even mentioned?

Mr Mallet-Prevost. — If your Lordship will recall the extracts as I read them the Dutch ran away leaving what they had. The Spaniards burnt their houses and took the property away and it was ordered to be sold.

Lord Russell. — And not identified?

Mr Mallet-Prevost. — And not identified.

Lord Russell. — That may be the explanation.

Mr Justice Brewer. — A proceeding *in rem*.

Mr Mallet-Prevost. — At page 12 of this 4th volume is a statement in this connection from the Court of Policy, opposite B :

“ The invasion of the Spaniards, as unexpected as it is contrary to the law of nations and the treaties of alliance, calls for your Lordships’ most serious consideration, and requires a speedy resolution for redress. Not only is the Colony exposed to the greatest danger from Cuyuni up above, and from the sea-coast below, the plantations being continually open to pillage and plunder (amongst which plunderers the principal are your Lordships’ runaway slaves, to whom all the paths, holes, and corners are known), but our fisheries both in Orinocque and on the sea-coast have been entirely knocked on the head and lost, and your Lordships’ Post at Maroco has been entirely ruined, all the Indians who still remained having fled, and none now remaining round or near the Post; those in Pomer-oon have also departed and abandoned their dwellings, with the exception of the Caribs, who hold their ground and whom up to the present they have not dared to insult. ”

I have referred to this expedition of 1769 not as an exercise of Spanish jurisdiction in this region although it was, in so far as any Indians were taken into custody who were between the Pomer-oon and the Orinoco, but I refer to it for the purpose of showing that at this time this expedition which passed through the Barima and through this Dutch region found no Dutch settlement whatever there. In connection with that special point I call attention to Garriga’s statement at page 48 of volume IV between E and F.

“ That it is a fact that in February of last year the declarant, as Prefect and Superior of the Missions, gave permission to the Reverend Fathers Friar Joseph Antonio de Zerbera and Friar Felix de Tarraga to go down to the mouths of the Orinoco and River Barima to fetch back the Aruaca and Guarauno runaways or deserters from the Missions under their charge; and that these Religious, with the boat and escort which conveyed them, finding their Indians scattered between Guayne and Moruca, took them and arrived at the Post, where there was a Dutchman who had three Indian women with their children, whom he had

enslaved and seized from the mouths of the Orinoco as they declared to the Fathers, and the latter brought them to the Missions, but without violence or doing any damage to the Dutch. And that as regards the Post and commercial establishment wick Gravesande supposes the Dutch Company held between Guayne and Povaron, the declarant neither knows, nor has heard speak, of such establishment : that neither has he any knowledge of the murder of the officer of the lodge Arinda, towards the uppert part of Essequibo, nor even of its existence; and that it seems incredible to the declarant and that the Spaniards of Orinoco, or the Indians of our obedience and acquaintance, should have committed this homicide. »

Lord Justice Collins. — Gravesande did write to his own people about this?

Mr Mallet-Prevost. — Yes; I have read this on page 6.

Lord Justice Collins. — No; on page 13 :

“ According to the last reports from the Postholder and from the Caribs, they are still all in Barima, having sent their prisoners to Orinocque, and they threaten to come again at an early date. ”

Mr Mallet-Prevost. — Yes, but he refers to the expedition of 1769.

Chief Justice Fuller. —

“ The said Owl being narrowly examined by me, through the medium of a very good interpreter, told me that the Spaniards in Barima, having been reinforced by another vessel, had at last attacked the Caribs themselves, captured several of the same, burnt their houses and ruined their plantations; ”
and so on. That is the invasion by the Spaniards that he is complaining of there.

Mr Mallet-Prevost. — It has, as I stated before, been contended that in some way the statement of Fray Benito de la Garriga that he did not give the missionaries authority to go all the way to the Moruca is to be taken in some way as an admission that Spain had no right as far as that, and in that connection I want to call attention to Centurion's report which will be found in this same volume at page 70. I read just below B;

“ For, as it appears from Document No 1, the Dutch are not, nor have they ever been, in possession of the rivers or rivulets which flow into the sea from the Essequibo to the Orinoco. Nor have they any other settlement there than a guard in a straw hut on the east bank of the River Maruca (or Maroco) which they have been suffered to keep there for about forty years, for the purpose of preventing the desertion of their slaves. ”

At page 71 opposite E we have this :

“ The seizure of the Indians of Moruca by the Spaniards consists in this : that two Catalonian Capuchins, with the usual escort, entered in a launch from the Orinoco, the River Barima, its affluent, in search of fugitive Indians from the Missions under their charge, and found them dispersed through those creeks between the Wayne and Moruca (territory contiguous to the Orinoco, and never occupied by the Dutch); while engaged in collecting the Indians, they arrived at the Post or hut of Moruca, where there was a Dutch guard, who had three Indians with their children enslaved, taken from the mouths of the Orinoco, as they declared to the Fathers, who brought them back to the Missions, without doing more injury to the Dutch. On the contrary, believing that they would render a service to the guard of the Post, who, to be able to clear himself to the Governor of Essequibo, requested them to give him a certificate of what had taken place, they complied, and gave him one through pity. But they exceeded their duty in saying that they had my licence to enter that place, which was not true, for the passport I gave to the master of the launch in which they went did not extend further than the mouth of the Orinoco, as is proved by Document No 1. ”

Now Gravesande goes on to say, and that is most important in throwing light on what the words which I have just read mean :

“ The Post which Gravesande states the Spaniards took, near a rivulet to the south of the River Wayne, between this and the Povaron, where he states the Company has had from time immemorial a trading settlement, and which also belonged, without contradiction, to the territory of the Republic, I imagine will be the one the Dutch abandoned, when they intruded in the River of Barima in 1768, as soon as they learned from their friends the Caribs that our privateers were visiting that river, as one of the most considerable which flows into the Orinoco, although he wishes to make little of it by calling it a rivulet; and the Director of Essequibo does not dare name it, lest he thereby declare himself an usurper; and consequently he shows himself of very weak memory by stating that this settlement was there from time immemorial, when it is scarcely two years old. ”

I read that passage to show that there was not the slightest thought in Centurion's mind of admitting that the Dutch had a right even to the Moruca and that that is not to be inferred from his previous statement that he had not authorized these missionaries to go so far. The letter is an inference which has been drawn and presented to the Tribunal, but it is an inference which I say is completely contradicted by the other words

of Centurion which I have read. At page 73 opposite F we have this further statement which shows how Centurion regarded this coast region

“ Among the forts suggested, one must be built on Point Barima, to the windward of the Ships' Mouth, fronting the north, with a wooden habitation, of good height, similar to the beacon of the Mississippi, as the ground there is very low and marshy; with this foundation and effective possession of the country we shall be able to watch the Dutch closer; we shall check them in every way on that side; we shall have an important look-out tower towards the sea, a sentinel at the River Barima, the principal avenue from the Colony of Essequibo to the Orinoco,

and so on. Before leaving this document I want to call attention to a passage which is on page 72 at the bottom of the page :

“ And now that your Excellency is pleased to command me to report upon this affair and give my opinion of it, for the information of His Majesty, I shall do so. In every country the most precious part is that of the coasts, and in those beyond sea much more so, because without them the productions of the interior are useless. In the vast Province of Guayana, so fertile and so advantageously situated, all the coast is occupied by foreigners, and there only remains to us Spaniards, the mouth of the Orinoco in one corner as an outlet to the sea. The Dutch possess the best and most useful part of the coasts of this extensive territory, for there many navigable rivers which traverse the most fruitful part of the far interior of Guayana flow into the sea.

On that account we ought to direct our political views to the destruction of the Dutch Colonies, beginning with Essequibo. ”

I call attention to this passage because it is this passage and other passages like it that have been quoted over and over again by our friends on the other side in support of their allegations that the Dutch were along this coast away to the mouth of the Orinoco. In this document written by Centurion I have read passages in which he says the Dutch never had any occupation of the coast between the Essequibo and Orinoco, and when he makes use of a general phrase as he does here, speaking of the Orinoco and of the possession the Dutch have of that coast, it is unfair and unjust to pick out that passage and found any argument upon it. It must be interpreted by the light of the specific facts he gives in this same document. I protest against the use which my learned friend has made over and over again of this passage and passages like it. I will quote another directly in this connection to be found at page 80 in this volume; it is a statement by Don José Solano in the year 1771 as to the same condition of affairs entirely. I refer to a passage opposite E, and which is wrongly translated I may say, it is translated in this way :

“ In Angostura two redoubts have been constructed, which close this passage with their guns ; and the Dutch of Essequibo, who had extended their settlements to the Orinoco, and established themselves in the Grand or Ships’ Mouth, I have forced to retreat to their legitimate possessions. ”

The correct translation of that is this :

“ In Angostura two redoubts have been constructed which completely closed this passage with their guns ; and the Dutch of Essequibo who have extended themselves towards the Orinoco, ”

and the Spanish word is “ hacia ” :

“ And who had even entered and established themselves in the Great or Ships’ Mouth have been made to retreat to their legitimate possessions. ”

This (whatever be the right translation, and I give the correct one) is, the Dutch had been driven out such as they were; but to make use of these passages and to found upon them the argument there was Dutch settlement up to the mouth of the Orinoco and along the coast, is to make a use of them which is not justified. The allegation to the fact there were such settlements is absolutely contradicted by all the clear evidence that we have in the case. Except that some allegations, to which I now refer, which are not attributable to any specific purpose and which are presented for the first time in this case, there is no allegation and no suggestion and of course no evidence that subsequent to the year 1768 there were any Dutchmen whatever either with or without authority residing in the Barima region. The possible exception to that statement (and I want to be full, explicit and frank) is the case of a man who is referred to as Mener Nelch and mentioned by Inciarte in the year 1779; and someone else (whether he be a Dutchman or not we cannot tell) who is mentioned by Schomburgk and is referred to as having been at a place called :

“ the last place of the white man, ”

but with those two exceptions there is nothing in the evidence before this Tribunal to show the presence of any Dutch in that region subsequent to the year 1769. The Spanish expedition of 1769 was followed by another in 1774; it was followed by another in 1775, and in neither of these is there any reference to any Dutchman west of the Moruca. In 1779 Inciarte made for the Spanish Government an extended and elaborate survey of this coast, which was the first survey of the coast ever made, and he found no Dutchmen west of Moruca. He did see traces of Dutch at Aruca, the place we discussed yesterday, and he was told a man, by the name of Mener Nelch, formerly lived there. I want to call attention

to some extracts from Inciarte's diary. I am not going to read those again that I have read. The diary is long and I refer to many passages but I shall not read again those which I have read. It is in the British Counter Case Appendix page 219 which I propose to read and I read this because it is the testimony of a man who passed through that region in 1779 and therefore the testimony of an eye-witness as to what he saw :

“ At five in the morning we set sail from the said Island of Cangrejos with a mild south-south-east wind, and at twelve noon we entered the said creek of Barima. This creek at its entrance is a bare quarter of a league wide, and from the said mouth inwards it is one-fourth less. Its entrance is adequate, since the channel is found sufficiently good by not bearing at all to the north, but endeavouring to keep the middle of the channel. Its depth at low water is 2 fathoms, the bottom is mud and the banks on both sides are densely covered with groves of mangrove. The land is all marshy, and though I went to survey it I could not penetrate through the swamps I encountered.

I found the three boats which I despatched beforehand in this creek, and they had met with nothing noteworthy. ”

And then at page 220.

The President. — There is the same word caño.

Sir Richard Webster. — Yes, we have never translated “ rio ” “ creek ” that I am aware of.

Lord Russell. — Passage D page 219, it is caño and that is “ creek ”.

Mr Mallet-Prevost. — I read from page 220 B :

“ At five in the morning we got under weigh, and until ten, when the tide began to fall, we navigated along the said Barima Creek and then moored the boats to two mangroves for the men to breakfast, and to wait until the tide should begin to rise. The lands we saw during the whole morning were all swampy on both banks of the said creek ; the trees we saw were mangrove and truli palm, with very thick undergrowth, and having sent a man to climb one of the tallest mangroves he reported to me that as far as he could see it was swamp, and that he saw no other trees except mangrove with here and there a truli palm and a turu palm.

At two in the afternoon we went to land to see if we could survey anything, but we could scarcely penetrate the length of a cannon-shot as we found the land more and more swampy, with much marsh and very dense mangroves.

At three in the afternoon as there was but little strength in the falling tide we continued navigating up the said Creek of Barima.

At five in the said afternoon we arrived opposite another creeklet — ”

that is the word I had in mind, when cañitto is used which would be more properly translated “ creek ” —

which runs from the larboard shore of the said Barima, its name is unknown, but as it seemed to me somewhat considerable I went with the two boats and twelve men to survey it. When we had entered a little way along the said creek, I discovered, on the larboard bank, a hearth or babracot of wood, with three Indian huts or cabins, and also the sticks they use for flint, tinder and steel to obtain fire, and although having taken off my boots, as it was impossible to walk otherwise, since the mud was above my knees, we made every possible effort to find some Indian from whom to obtain information, all our efforts in that direction proved fruitless.

Up to seven at night we continued to survey the said creek which is navigable for any kind of launch. ”

Lord Russell. — Is it necessary to read all this, could you not summarise it?

Mr Mallet-Prevost. — If the Tribunal will take my word for it I may save the Tribunal the trouble, and cite the passages. It shows distinctly that Inciarte went through all this region and that he found absolutely nothing there except the remains at Aruca to which I referred, that he passed through the Mora Passage — I was going to read that especially — but I may cite; although he passed through that passage he saw not a trace of anything there and I call attention to that in view of the allegation recently made by Mr im Thurn that there is a tradition of there having been at one time in the Mora passage a Dutch fort. If the Tribunal will allow me to read one passage, I think that it has special bearing, at page 243 and before I do that I should like to give the references to the other passages. I was going to read at page 220 from B to E at page 221 from B to D, at page 241 from B to C and now at page 243 opposite E :

“ At half-past six we left to starboard the Creek of Aruco, which at its mouth appears quite as broad as the said Barima, and we navigated up the Barima until eleven, about six leagues, without being able to land as it was entirely swamp. In the last four and a-half leagues the said creek is not wider than a pistol shot; so, because the Aruac Indian from Bauruma assured me that for more than four days of navigation there is nothing but low and swampy lands, and the provisions were somewhat spoilt, I resolved to descend to the mouth of the said Creek of Aruco, and after surveying this, to proceed to the town of Guaina (Guayana). ”

And then there are some further passages at page 244 where reference

is made to this Mener Nelch. The passage begins near the top of the page, but I shall only read the phrase beginning opposite C.

“ It is free from shrubs and full of trees very suitable for laths, among which we found some sour oranges, custard apples and coffee. The aforesaid hill, as an Indian called Guillermo Beltran assured me was in former years inhabited by a number of Carib Indians and a Dutchman from Essequibo called Mener Nelch, whose Poito or slave the said Beltran was. To show us that what he said was true, he took us to one side of the landing place at the foot of the said hill and showed us the mouldering fragments of a Guairo and a great pirogue, assuring us that they had belonged to his master. ”

This is the same place which was clearly the site of Van Rosen's settlement in 1766 and to which it is very likely that Mener Nelch subsequently went. The only identification it is possible to make of Mener Nelch is with a man named Nelis who for some years from 1767 to 1774 was postholder at Pomeroon, and Burr in speaking of this matter suggests and, it seems to me most reasonable, this Mener Nelch is probably a corruption for Myn Heer Nelis. If that be not a sufficient explanation there is no way of identifying this man whatever, but it is clear from this reference that he was there for a brief period and there in direct violation of the order made by the West India Company not to settle there. As I stated a few moments ago, apart from this Mener Nelch, the only other suggestion of any possible Dutch settler in that region is one which is made by Schomburgk where he speaks of “ the last place of the white man ” and the description which he gives of it would seem to correspond, if it is possible to identify it with any place, with Coriabo which is also the site of the settlement such as it was in the year 1768 of the widow of La Riviere and the others who were there. The only other suggestion as to any Dutch settlement in this entire region is made for the first time in this case; it is really not alleged in the British Case, but some evidence is submitted and I do not want to omit any suggestion that may be made by the other side in this connection. Mr im Thurn in the sixth volume of the Appendix to the British Case, page 240 :

“ I am assured that a Dutch fort exists or did exist some four years ago on the Wainana, close to Pone Pedro, at a distance of 33 Spanish miles *beyond* the Amacura. ”

There are two statements of Mr im Thurn; the one I refer to now refers to a Dutch fort at some place away beyond the Amacura and it is possibly on some such statement that in the British map a place has been marked here and designated by the name of a Dutch residence :

“ I am assured that a Dutch fort exists or did exist some four years ago on the Wainana, close to Pone Pedro, at a dis-

tance of 33 Spanish miles beyond the Amacura, and tradition still speaks of an iron gate maintained by the Dutch at Yartiti, a few miles beyond the Amacura. I need hardly allude to the Dutch Post marked in Bouchenroeder's map, traces of which seem still to have existed about 1840, at the time of the Schomburgk's travels, though the sea has now washed away the site of that Post".

It is wonderful how the proposition of Beekman in 1683 to have the Pomeroon postholder to go and from time to time to occupy the shelter has grown, and has reappeared, growing in importance, and finally appears as a Dutch fort, Bouchenroeder putting it as a post and a great argument founded upon it by Schomburgk and others as a claim. Here we have the same fallacy, from which I should have supposed Mr im Thurn would be free; but it is in the passage I read at page 240 opposite A of the sixth volume of the Appendix to the British Case and at page 236 of volume VII in which he says this :

" On the Morawhanna Channel, at a point about one-third of its length from the point where it enters the River Waini, is a place locally known as " the Dutchman ", it being asserted that there was a settlement or a fort erected by the Dutch at that point. From its position, as it commands the whole of the first channel of the passage coming up from the River Waini, it is very likely that such a spot should have been selected, but, beyond the name and the local tradition, there is no definite evidence on the subject. "

I do not know if that is supposed to be the one or some other Dutch, for that does not appear but for what it is worth, I do not know if that is it.

Lord Russell. — It is « Dutch settlement traditionally. »

Mr Mallet-Prevost. — I suppose that it is; we have the wall map full of Dutch posts and residences and everything, but when we come to the evidence it shows what there is there — absolutely nothing.

The President. — You have a Dutch settlement but you are not recognizing —

Mr Mallet-Prevost. — No; *that* is not our map; *this* is our map. But I have wanted the Tribunal to have the benefit of both maps and I have had placed upon this map what we admit and what we recognize. This map shows every Dutch settlement that there ever was including in the word " settlement " the posts for whatever they may be worth. In green are marked whatever is established by the Dutch, in red by the Spanish, and in this yellow color I have put the Dutch posts on the Cuyuni which were destroyed either by the Spaniards or abandoned by the Dutch for fear of the Spaniards. I shall deal with that when I deal with the interior.

I have marked on this other map, in red, features omitted from the British map. There is no mention of this Curumo fort nor Mutanambo

nor Pagayos. I have had put in red the same posts. The Case and Counter Case of Great Britain and Venezuela show some confusion of the location of those posts, but in view of the evidence that we now have I think we are agreed those were practically the locations of the posts. About the first site of 1755 there is no difference of opinion; that we are agreed upon. As to the second location of that same post we are not agreed, but I do not think that Great Britain has any site to suggest.

Lord Justice Collins. — The one that was raided?

Mr Mallet-Prevost. — No; it was not raided there, it was raided in the second location. I shall discuss that when it comes. The location of the first site is somewhat indefinite; we know it was between the second location of the first post and the second location of the second post.

Lord Justice Collins. — The point where it was raided was at the corner of that bend?

Mr Mallet-Prevost. — This is where it was and the final location of the Dutch post there; that we agree.

Lord Russell. — You say on the other map. Would you be good enough to point out on the green where you say you have marked the Dutch settlements?

Mr Mallet-Prevost. — None whatever from the Moruca to the Barima, because I deny there were any. I have taken each one of these so-called settlements and have shown it cannot be called by that name.

Lord Russell. — Do you mark any settlement?

Mr Mallet-Prevost. — No; none on the coast, there never were any.

Lord Russell. — None north of the Essequibo?

Mr Mallet-Prevost. — I have marked none north-west of the Moruca

Lord Russell. — Have you marked any except at Moruca?

Mr Mallet-Prevost. — Moruca, Wacupo and Pomeroun.

Lord Russell. — On the coast I talk of.

Mr Mallet-Prevost. — None. Of course the plantations I referred to yesterday were along the edge of the Arabian coast here, and the Essequibo settlement itself was in the Essequibo river.

Lord Russell. — Then you have marked nothing in the nature of a settlement north of the Moruca.

Mr Mallet-Prevost. — North-west of the Moruca, none.

The President. — Between the Essequibo and Moruca there are three.

Mr Mallet-Prevost. — They are different locations of the same post. I do not know that the locations are marked exactly or that they correspond entirely, but the difference is trifling. The difference is not significant at all.

Lord Russell. — And none in the neighbourhood of the Waini?

Mr Mallet-Prevost. — Oh, no; none whatever.

Now a large number of affidavits of Indians and others have been presented to the Tribunal and read. I will not read them but will say a word as I read them and say what they show. Reading those affidavits one after the other, one rises with the impression, *this whole country is*

full of Dutch remains; and yet there is nothing there! But, when we analyze and classify these affidavits and show what it is they do allege we find after all it is very little. They establish very satisfactorily the remains at Aruca and at Coriabo and at *no other place*. Aruca, as I have shown, was where Van Rosen and his gang staid for a time; and Coriabo is the possible site of La Riviere and of the Englishmen from Barbados and whoever else may have been in that region. Mr im Thurn at page 240 of the 6th volume of the Appendix to the British Case —

Lord Russell. — The Aruca you identify with Van Rosen?

Mr Mallet-Prevost. — Yes.

Lord Russell. — And Coriabo with La Riviere's widow?

Mr Mallet-Prevost. — Yes; and the others with her.

Chief Justice Fuller. — That, the affidavits said, was the last place of the white man?

Mr Mallet-Prevost. — No; not Coriabo. That is shown upon Schomburgk's map. I think it is considerably further up. It is up the Barima. We have no evidence whatever of it except Schomburgk's statement.

Lord Justice Collins. — I thought you said you identified it with Mener Nelch.

Mr Mallet-Prevost. — No; we know nothing about him. It is simply Schomburgk's statement that he found a site called the last place of the white man. That is all that we know about either of the settlers or the place, and the only two places where the evidence shows that any people lived at all were about the Aruca and Coriabo; the one I have identified with Van Roosen's gang of 1767, and the Coriabo with La Riviere and the others who were with him and subsequently with his widow in 1768.

Now as to remains at Aruca; Mr im Thurn testifies in the 6th volume of the Appendix to the British Case at page 240 and also in the 7th volume of the Appendix to the British Case, pages 236 and 237. I do not read his statements and those of the other witnesses, some of them Indians if not most of them. In one form or another they refer to the same fact, existence of some remains which are supposed to be Dutch about that locality. There is a similar statement by Z. A. Lewis at page 218 of the 7th volume; another by Issokura, an Aruac woman, who testifies to the tradition of Dutchmen at Hobo, at page 220; another of Maria Pasquallé, a Spanish Arawak, who testifies to Dutch planting fruit trees, at page 223; another by Alexander Addison who testifies to places on the Aruca where old fruit and coffee trees grew and has heard that the Dutch people were in those parts. That is page 212. Then Mc Clintock's report that the Dutch had a settlement on the creek which is identified with Hobo at page 212 of the 6th volume. That is the evidence with regard to remains at Aruca. Then there is some evidence as to remains at Coriabo.

Lord Russell. — Wereabouts on the Aruca is that fixed with reference for instance to the junction with the Barima?

Mr Mallet-Prevost. — *There*, my Lord (pointing it out).

Lord Russell. — Pretty close on to the Waini?

Mr Mallet-Prevost. — I should say it was on the west bank of the Barima. It must be very close from the description given.

Lord Russell. — Close to the Mora?

Mr Mallet-Prevost. — Close to the Mora as given there.

As to remains at Koriabo we have the evidence of Waiakumma in the 7th volume to the British Case Appendix at page 209, who states that the Dutchmen

“ had one place up Koriabo Creek. I also know the place below Koriabo which is called “ the Dutchmen’s place.” The trees there have been cut down a long time ago and have grown up again. ”

Another affidavit is by Burriburrikutu, a Warow woman, who had seen three trenches at the Dutch place below Koriabo :

“ When I was quite young my sister, who was much older than myself, showed me the three trenches at the “ Dutchmen’s place ” below Koriabo. She said that the middle one was the koker trench. My sister said the koker trench was grown up then, but that “ before-time ” it was quite open, and she had seen it plainly. This is the same trench which I showed to the Government Agent two days ago. My sister’s name was Banawaoko. She is dead now. She died at Koriabo a few years ago. She was very old and quite blind when she died.

I have often heard that the Dutchmen had places close to Koriabo, but I never saw any bricks or other things of theirs. ”

That is the 7th volume. Then at page 211 George Blackburn testifies to the existence of three trenches, as to having seen in 1885 a piece of brick work brought him by an Indian. That is volume VII, page 211.

Then Eliot (page 214) testifies to four trenches or canals and three at least of these have certainly been dug out by hand ;

“ Four trenches or canals, and three at least of these have certainly been dug out by hand. The fourth, and largest of these, appears to be a small “ itabbo ” of the Barima, for, after running some distance at right angles to the river, it turns southward, and, as I was informed at the time of my visit, enters the river again a little below Koriabo. ”

And Bunbury, an Akaway Indian, testifies to trenches and that his father told him there were Dutch places there. That is in the 7th volume, page 217 ; and Thomas Thompson, an Akaway Indian, testifies that his parents had spoken about who the country belonged to, at page 218 of the 7th volume.

Stephen Johnson testifies :

“ My father told me that his father told him the Dutch people had a town called Ocaboh a little below Coriabo, on Barima, and had also machinery, brick buildings at Wassee-moree, above Beckwa, in the Barima River. My father said that my grandfather told him that money was buried at Wassee-moree by the Dutch when they heard the English were coming to take the country. ”

That witness got things a little mixed up. The settlement had grown into a town and he got the Spanish and English confused. His testimony is page 232, and then Mc Turk endorses all the Indians say at pages 233 and 234 of the 7th volume and Cayamarica at page 226 testifies to remains at Coriabo. Then in reference to the Dutch trade in the Mora passage we have the passage which I have read of Mr im Thurn and he is corroborated in that by two witnesses who say they heard something of the kind ; one Samuel Josephs at page 216 of the same volume and the other is Lewis at page 217 of the 7th volume. There is another, Callietro, who testifies after he was a grown man the Dutch used to live in this place, so that he brings the Dutch occupation down to recent time.

I have pointed out that the existence of such a place is contradicted by Inciarte. There is a statement by Mr im Thurn (I think there is no other in support of it) of a place on two hills on the Waini called Great Canyeballi and Little Canyeballi with fruit trees bearing fruit, and so on, — absolutely the only evidence in the case of anything there and that statement of his contradicted by the extract which I read from Inciarte as to the fact there was nothing up the Barima and Waini river. There is another place called Tukpara in the interior, and places Abaikabaroo and Tookoowarry. An Indian, Thomas Thompson, in the 7th volume, page 218, testifies to these. The locations are too indefinite to enable us to present any testimony. In fact, there is no testimony either in support or contradicted except the testimony we have showing the complete absence of any Dutchmen there and the positive testimony that people passing through there saw no Dutch settlement. I think I have gone through all the affidavits of the British witnesses and as I say the only two places that are identified with anything like probability or certainty are the places at the mouth of the Aruca and at Coriabo, both of which are fully explained by the evidence that I have discussed before the Court.

Lord Russell. — Why do you say the mouth of the Aruca?

Mr Mallet-Prevost. — Because it is referred to in testimony which is taken in Van Roosen's trial as a place on the Aruca and it is also referred to as a place on the west side of the Barima.

Lord Russell. — What does the mouth of the Aruca mean? The Aruca is a tributary of the Barima. Does it mean where it discharges into the Barima?

Mr Mallet-Prevost. — Yes. If your Lordship will take the two facts we have in the testimony of Van Roosen; one is, he lived on the west side of the Barima; the other that he lived on the Aruca. Putting those two together it must have been close to the mouth of the Aruca for no other place would meet those conditions. That place, Hobo, and so on are the places identified by various Indian witnesses as having Dutch remains. I have not given all the names. Now, Mr President, I have gone through all of the evidence on the subject of settlement and briefly.

Lord Russell. — During the Dutch period?

Mr Mallet-Prevost. — Yes. We have in the first place the statement made by Schomburgk there was a Dutch fortified post at Barima and a colony, under merchants of Middelburg, in 1648 till 1666. That is shown to be unfounded. In the first place, of a post on the Barima in 1683, which Lord Aberdeen in one of his notes said had been ordered to be fortified by the West India Company, I have shown as, so far from the Company ordering it to be fortified, in the first place it was a shelter that was referred to by the Pomeroon postholder and he received a scolding from the Company and was ordered to abandon the trade to the Orinoco. Then we are told there is a Dutch fort miles beyond the Aruca. I need not treat that seriously; and another Dutch fort on the Morawhanna which I may pass; that is to say then, we have there distinct allegations of a Dutch settlement in Barima; in 1760 when there were five or six Surinam slave traders in that region, and in consequence places in 1764; the only evidence that there is about that is that some of the Surinam rovers who came with passes from the Surinam Governor to go to Barima, instead of going to the Barima, remained in the colony of Essequibo. We have the year 1766 which corresponds with Van Rosen and his gang. We have the year 1768 when the Spaniards cleared out of the Barima whoever were there including the widow of La Riviere and then we have the statement as to the Mener Nelch and the last place of the white man, and that is absolutely all.

I call the attention of the Court to this. There is not even an allegation in the British Case that there is any settlement subsequent to 1798, no pretence, except a pretence that may be inferred from the presentation of these Indian witnesses as to remains, and the general impression that the whole country was covered by the Dutch. General Harrison calls my attention to a most important fact that in all the Dutch records there is no mention of any Dutch settlement in these regions, except there was a distinct disaffirmance by the authorities as to any Dutchman from Essequibo being there, or of right to be there.

Lord Russell. — That refers to the Barima, what part?

Mr Mallet-Prevost. — To every part of the coast region between the Moruca and the north west, the main stream of the Moruca on the south east and the Imataca mountains in the interior, never a Dutch settler there.

Lord Russell. — That was not the point, in my understanding, you were making; it was the prohibition.

Mr Mallet-Prevost. — That is for settlement in the Barima.

Lord Russell. — What that meant one does not see.

Mr Mallet-Prevost. — Except one may take it it was a general prohibition for that whole region. I should think undoubtedly it was intended to be taken in that way. One of the reasons for dividing this subject, treating first the question of settlement, and now the question of trade, was to disclose to the Tribunal how utterly lacking in evidence to support it are the British allegations as to settlements in this region; and to make clear therefore the reason why it has been necessary for our friends to fall back upon a second line of defence and to allege a political control of this region. Of course, knowing the facts, they knew that it would be impossible for a title to be sustained on any basis of actual settlement, and this matter of settlement and control has all been confused; and it is because there has been that confusion I have thought it well to treat these subjects separately, and to present the Tribunal with the facts regarding settlement so that there can be no confusion as to that. The facts I have presented as to settlement go in no way to establish political control. I will meet the political control. I want it clearly to appear that if this region is to be regarded as a Dutch region, it is not because of Dutch settlement, but must be because of Dutch control.

Now I come to the question of Dutch Trade and as introductory to that subject I want to read a few passages from our own Counter Case in which the contention of the British Case is there regarded and summarized; from page 69 of the Venezuelan Counter Case.

“ The British theory of political control, so far as is disclosed by the British Case, rests upon certain general propositions which may be summarized under the following heads :

1. Dutch trade in Guiana, its nature, regulation, extent and results.
2. Dutch control of timber cutting.
3. Dutch maintenance of the peace.
4. Dutch jurisdiction over Dutch settlers.
5. Dutch protection of and jurisdiction over Indians. ”

Now at page 70.

“ That the propositions referred to may be presented, as far as possible, in the words of the British Case, the following extracts have been selected as expressive of Great Britain's position with respect to each of these subjects.

1. As to the nature, regulation, extent and results of Dutch trade. ”

I now read an extract from the British Case at page 80.

“ The existence in any region of trade carried on by the

Dutch systematically and not on sufferance excludes the idea of Spanish political control, while it naturally, and in fact, led to political control by the Dutch. It is from this point of view that it is important to see over what region the Dutch traded systematically and as of right. ”

Again citing from page 82 and 83 of the British Case.

“ The trade of the Dutch with the Indians led naturally to control by the Company of the territory in which this trade was carried on. The Company, under their Charter, had a right to a monopoly of trade. By sailing Regulations issued from 1632 to 1648, they reserved for their own ships the right of visiting the coast to the east of the Orinoco. ”

And turning to page 72 we have summarized there with regard to trade what it seems may be fairly drawn from these statements in the British Case, namely :

“ It is admitted that to produce such a result the trade in question must be shown to have been carried on systematically and as of right; ‘ systematically and not on sufferance, ’ and the allegations regarding charter rights and ‘ sailing regulations ’ constitute a recognition of the further qualification, that the trade must also be shown to have been a monopoly. ”

I call attention to the fact that in the very words of the treaty of arbitration under which this case is being considered it is exclusive political control of a district that is to be taken into account. I am not dealing now with such a large subject as political control, I deal only with a single branch of it, which is trade, and if a political control must be exclusive *a fortiori* must the trade be exclusive.

I propose, Mr President, to ask and answer two questions in this connection. The first is : Did the Company claim any exclusive privilege for trade in this region? and the second is : Did the Company exercise any exclusive privilege of trade? two very important factors in this controversy. In the first place : Did the Company claim an exclusive privilege of trade? In that connection without reading them I call attention to the regulations of the States General as to trade, in the first volume of the Appendix to the British Case, pages 135 and 136. Those regulations show very clearly that the West India Company claimed an exclusive privilege of trade, which was exclusive only against Dutchmen; it was not exclusive against anybody else; it could not be exclusive against anybody else, because the Netherlands had no right to vest the West India Company with a monopoly of trade against other nations, and that it was so regarded by the Dutch, always, is evident from the few citations I shall give. The first is in the first volume of the Appendix to the British Case at page 181, opposite D :

“ And inasmuch as we have received reliable information that on the Orinoco a good trade could be established with the Spaniards, we shall by next letter expect a list, or petition, of the goods and merchandize required therefor. ”

Lower down below E.

“ You will especially have to take good care that the river may be navigated by no other ships than those of the Company alone ”.

Here is a statement by the West India Company which has relation to trade in the Orinoco river, a river recognized as under Spanish dominion. It is a trade which is exclusive to whom? As regards the Company it is exclusive to other ships than those of the Company, and that must mean Dutch ships. It is not exclusive against the Spaniards, because it is on Spanish territory, and it is a trade with Spaniards themselves, as I shall show, and it is not contradicted.

In the next place I call attention to a passage at page 245 of the first volume of the Appendix to the British Case. This is a communication from the West India Company.

“ We leave it still most urgently recommended to you that you strictly maintain the prohibition of trade in red slaves, annatto dye, and balsam copaiba, since the Company desires, as heretofore, to keep that trade exclusively for itself, in order thereby in a measure to provide for the costs and heavy expense of keeping up that Colony, and we can therefore give no heed to the complaints of the inhabitants in this matter. And, as for their protestations that they are not going to trade within the territory of the Company, that is absurd indeed; for, although Orinoco, Trinidad, etc., is (*sic*) under the power of the Spaniards, still it also lies within the Charter of the Company, where nobody has the right to trade except the Company and those to whom the Company gives permission to do so, so that it all is the territory of the Company, although we have no forts there ”.

Showing clearly that what was in the minds of the Dutchmen was that they had an exclusive privilege against Dutchmen, not against Spaniards; they are speaking here of the Orinoco and of Trinidad. In the second volume of the Appendix to the British Case page 131 at the bottom of the page.

“ Complaints having been repeatedly made by the Commandant of Orinoco concerning the evil conduct in Barima of the traders, or wanderers, as well from Surinam as from here, I have written circumstantially to the *ad interim* Governor there, Mr I. Nepveu, whose reply is awaited daily ”.

I called attention yesterday to the fact that no rights can be derived by the Essequibo colony from the acts of colonists from Berbice and Surinam, and cited a number of documents in that connection. In that same connection may I call the attention of the Tribunal to another document in the first volume of the Appendix to the British Case at page 213 opposite C.

“ We have seen what you write of the ships of Jan Overschelde and Jacob de Jonge, who had come from Surinam to trade in Essequibo and buy up slaves among the Indians to the injury of the annatto trade; which matter we have seriously considered, and we have resolved to instruct you hereby and to expressly charge you, that you must in nowise or for any reason whatsoever allow this, whether directly or indirectly, but, on the contrary, employ force to prevent it, and do everything to preserve quiet and peace among the Indians and uphold the interest of the Company. ”

There we have an order from the Company at home to the Commandeur to prevent the Surinamers from trading to the colony, and we have in the second volume a reference to the trade in the Barima, and couched in such language it is clear that the Essequibo Governor did not think in trading in Barima the Surinamers were encroaching upon his territory. I cite that to show there was no claim by the Essequibo authorities of an exclusive right to trade in the Barima, and when there was a claim of exclusive right to trade it was as against other Dutchmen.

In the same connection I refer to a passage in the third volume of the Appendix to the British Case at page 114 opposite C-D. The Director General of Essequibo in 1764 writes to the Governor of Surinam and complains that the Surinamers instead of going to Barima to trade, as allowed in their passes, are remaining in the colony. Not a suggestion that in going to Barima they are in anyway encroaching upon the rights of Essequibo.

In the second place I ask: Did the Company exercise an exclusive jurisdiction of trade?

Lord Russell. — That is the more important point.

Mr Mallet-Prevost. — I think both are important, my Lord. That must be a claim of right. I answer without hesitation: The British and French traded there; the Swedes were there at one time, and of course the Dutch from Surinam and Berbice. Spaniards go without saying. I have already in connection with the question of settlement referred to a number of instances, and mention them as I pass, calling the attention of the Tribunal to some additional instances in that connection, which have not as yet been brought to the attention of the Tribunal.

Lord Russell. — Is it quite the right way to consider the question: Did they claim the exclusive right to trade, or exercise it? Is not the question: Did they control in the areas in question the trade?

Mr Mallet-Prevost. — My Lord, the statement in the British Case is that there was a trade which was a monopoly and that that trade led to control. It was part of that control, and hence it is I feel I am entitled to say, to sustain this proposition, there must be a claim, and there must be an exercise which is exclusive.

Lord Russell. — An authority claiming a right to control trade in a given place suffers other persons to come there to trade with him; that is not any fact inconsistent with control of the first authority.

Mr Mallet-Prevost. — That is precisely the position I shall take. As to Spain she permitted at times these traders to go and at times evicted them. The Dutch never evicted anybody. Spain did; and I shall show the control she exercised in that regard, and when I speak of control, not only of the region but of trade, I shall show there was no control by the Dutch, but there was by Spain. As introductory to that question it occurred to me as proper to ask if the Company regarded themselves as vested with a right or claimed it and whether they exercised it. If they *allowed* A, B or C to go there, that was exercising it, they could *allow* whom they pleased, but it does not go to the gist of the question; there must be an *exclusive* right of trade in them; they may allow somebody else to do it, and I point out the Dutch from Essequibo looked upon others going to Barima as nothing with which they had to do. They speak of the Surinam Dutch being there, they speak of the Berbice Dutch being there, they make reference to the French from Martinique and of British being there but never a reference to the fact that they were permitted by the Essequibo Dutch. I say these go to show they did not regard themselves as being vested with any exclusive right, and what is more, that they never exercised such right. There are several references I shall refer to which have been read, and only cite them. One of these references is in the second volume of the Venezuelan Case page 59 where the French are referred to as sojourning in the Barima in 1689. Another in the first volume of the Appendix to the British Case, where a like reference is made to the French in 1682.

Lord Justice Collins. — What is the point of that?

Mr Mallet-Prevost. — Instances of other than Dutch trading in the Barima.

Lord Justice Collins. — The first was French?

Mr Mallet-Prevost. — Yes; the second was French also. The third is in the second volume Venezuelan Case, page 43, and that I shall read as that has not yet been read to the Tribunal and it seems to me important. The one to which I now refer is of the date 1683.

“ To answer point by point your extremely gratifying letter, I shall first of all hereby declare that I am sorry about the low price of the annatto dye and sugar; I shall therefore, according to your last order, dated June 25, 1682, attempt to buy the dye from the natives at the lowest price possible without risk,

and to impress them, though they are by nature dull and stupid, with the danger of ruin to that trade. For, if one did not proceed with caution in this matter, they would not only fail to bring the annatto to market, but out of obstinacy would plant no dye trees hereafter. This would be the death blow to that trade, to the irreparable damage of the future. For these people, like irrational animals, listen to no argument; inducements of every kind — good offices, wares, — have no effect upon them; they meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly squares with the truth, on account of the trade which the French from the Islands carry on there.”

I do not suppose it will be suggested that that was carried on by the permission of the Essequibo Dutch. This very reference is to a rivalry. The Essequibo Governor has evidently been scolded by his home Company for not getting the dye on better terms, and this is his reply; the French are his rivals in that quarter.

There is another reference in the second volume of the Venezuelan Case to the year 1690, at page 63, and to the French at Barima.

Lord Russell. — What you have just read is January, 1683?

Mr Mallet-Prevost. — Yes.

Lord Russell. — In the end of the same year the same Governor writes to say he has provisionally taken possession of the Orinoco or the Pomeroon, I am not sure which.

Chief Justice Fuller. — The Barima.

Mr Mallet-Prevost. — That post of 1683 I have already dealt with.

Another reference to a trade in 1701, again by the French, is the first volume of the Appendix to the British Case page 224 E and F.

Now in the year 1717 there is a very significant document, a petition of three settlers in Essequibo, and it is to be found in the first volume of the Appendix to the British Case page 246.

“ It is now nearly five years since we have been prohibited by the Commandeur Pieter van der Heijden, acting under the orders of Y. Highnesses, from trading, as well within as without this colony in Red Indian slaves, balsam, &c.; through which prohibition we find ourselves deprived not only of the advantages the said business, however small, would have been able to bring to us, but further must see the profits, which were to be expected therefrom, accrue before our eyes to our neighbours, to wit, the colonists of Surinam and Berbice, ”

and lower down on the same page, B,

“ Your Honours are well aware that it is permitted to those of the said provinces to traffic in everything they can get, and that nothing else is left for us than the bartering for Indian ves-

sels, canoes, and corials, and occasionally some hammocks or cocoa from the Spaniards in Orinoco; so that we are restricted in a river, which is outside the territory of the Noble Company, where the same has no more power than a private merchant, which is in Spanish possession, and where the meanest person of our neighbours is allowed to carry on trade in anything that he pleases, as well as the Noble Company, without exception from what place they come.

Y. H. are also aware (or at present we suppose so) that Orinoco is a river which is actually under the King or Crown of Spain, which nation is consequently master there, and whenever a vessel from Essequibo (we represent the matter truthfully) be now come in Orinoco, whether it be for trading in vessels or otherwise, and likewise a canoe out of Surinam or Berbice find itself there, and that according to the fashion of the Indian traffic one of these Indians with some of his wares (whether it be slaves, balsam, or anything that for us is contraband, and is, nevertheless, allowed), to those of our aforesaid neighbours be come alongside of the Essequibo canoe (to which be it said without flattery they also sell with pleasure, partly because they have better goods, partly because they are able to come to an agreement with us more peaceably), then our settlers are obliged to answer the Indians that such merchandize cannot be traded in by them, thus sending them back to the Surinam canoe; they are consequently obliged to contribute against their will to the profits of the latter, whilst the French and English barques are not behindhand. Yet further, whenever a canoe, be it of Surinam or Berbice, is under way, and in the neighbourhood of this river or elsewhere, meets any free Indians who have red slaves for sale, they buy the latter, and even bring the purchased slaves within the river, deposit them with one or another of our inhabitants, proceed on their voyage, traffic in the rivers Marocco, Weijne, Barima, Pomeroon, Orinoco, Trinidad, and, wherever it is convenient to them, aim at the greatest profit, and when they have got everything they can, call, in repassing, for the slaves that they had left here, and push on their journey to Surinam. ”

There we have another piece of evidence of the strongest character coming from the men in Essequibo who wanted to participate in this trade in the Waini, the Moruca, the Barima, and all of these settlements and they are prohibited from going there, while on the other hand the Surinamers, the French and English all go there as their competitors. Why did the Essequibo colony prevent its own colonists from going there? Because it did not want its free colonists as competitors of itself in that region. Why not exclude the French, and English and Dutch from

Surinam and Berbice? Because it had no right to. It cannot be suggested they were trading there because the Dutch Company allowed them the privilege and refused it to its own colonists at home.

Chief Justice Fuller. — What countries would come in competition?

Mr Mallet-Prevost. — At this time the Company had nothing except at Essequibo and Pomeroon. This is in 1717, and if your Honour will remember the Charter of the Company which at first was very broad, in the year 1674, was limited to Essequibo and Pomeroon.

Chief Justice Fuller. — Yes, I remember that in reference to this part of South America, the West India Company were carrying on operations elsewhere.

Mr Mallet-Prevost. — No question about that. It was a great trading Company carrying on operations wherever it could.

(Adjourned for a short time.)

The President. — Mr Mallet-Prevost, please continue your argument. With regard to the references which you have given, and which the Tribunal did not read, perhaps you will be so kind as to put them on the proceedings of the Tribunal. It would be useful to have them.

Mr Mallet-Prevost. — That has been my object, Mr President, in giving the references to you.

The President. — Just so. I did not understand that.

Mr Mallet-Prevost. — Many of these references, Mr President, refer to extracts which have been already read; and, as I promised the Tribunal that in dividing the subject as I shall divide it, I should do so avoiding repetition as far as possible, I nevertheless desire to give the references, so that if any one of these references were desired to be investigated, it could be done by the Arbitrators themselves in the light of the references that I might give.

When the Tribunal adjourned, I had not quite finished reading all of the extracts which I had in mind from the Memorial to the Directors of the West India Company of the Zeeland Chamber, a document beginning at page 246 of the 1st volume of the Appendix to the British Case. I desire to read the closing words of that document as it appears on page 248. I read about opposite letter B :

“ We cannot so far comprehend what is the object of Y. H. in prohibiting the business to us, seeing that you cannot hinder those from Surinam and Berbice—yea, not even French, English, and other foreign nations— it appearing to us as if Y. H. wished to place the yoke on our neck alone, because, so long as Essequibo has been in European hands, there cannot be any instance shown that the inhabitants of this Colony alone were restrained from carrying on this traffic, &c. ”

That is a passage which is entirely in line with the claim that I made,

that this was a trade which was in no way controlled by the Essequibo Dutch.

Lord Russell. — That is directed, is not it, to the trade in the Orinoco?

Mr Mallet-Prevost. — It refers, my Lord, to trade in the Orinoco; and, at the bottom of page 247, it distinctly refers to

“ the rivers Marocco, Weijne, Barima, Pomeroon, Orinoco and Trinidad ”.

Mr Justice Brewer. — And to traffic in those rivers?

Lord Russell. — Yes.

Mr Mallet-Prevost. — I refer the Tribunal without reading it to a passage in the third volume of the Venezuelan Counter Case Appendix, at pages 38 and 39, which has relation, one part of it to the Swedish occupation of this Barima, or the Swedish attempt at occupation at one time, and the other part of it to the French from Cayenne being in the Barima. I will without troubling the Tribunal to refer to it, simply read the passage which has reference to the French. It is at page 39; this is speaking of the Caribs of Barima : —

“ The Caribs also informed him that two longboats, with some Frenchmen and Negro fugitives from Cayenne, had arrived in that creek intending to proceed to this City of Guayana, but that said Indians had killed them all and taken their boats and luggage. ”

Another reference to the French, in the year 1733, is to be found in the British Counter Case Appendix at page 170. As I said, I shall not read that. Another, referring to the year 1735, is in the second volume of the Appendix to the British Case, and that I shall trouble the Tribunal to look at. It is on page 21. This is one of the very few instances which we have and to which I shall later point when I come to enumerate them, of any Essequibo Dutchmen actually trading in the Barima, and I do not want to pass it with a mere reference but to exhaust at once what I have to say with regard to the individual concerned, a man by the name of Cauderas. I read from the bottom of page 20 : —

“ Having collected some red slaves, which had been bought for his comrade's goods besides a canoe, he did not hesitate to go off with some Frenchmen from Martinique, who likewise traded there, to their island, and to abuse the permit that had been granted him, where, having disposed of his aforesaid comrades slaves, he bought a boat, in company with others, — ”

let the Tribunal keep in mind that this reference to Cauderas is a reference to a purchase which he must have made at Martinique of a boat, and to a third expedition which must have started from Martinique along with Cauderas to the Barima, —

“ and came again to the said River Barima to carry on business, giving himself the name of merchant on the aforesaid vessel, and, notwithstanding the desertion of which he had been guilty, he had the audacity to return to this Colony in a canoe full of Caribs, together with another of his shipmates, under pretext that he had some outstanding claims, and would take for them as much goods as were required to settle them, although before that time various accusations had been made against him, as that he (Cauderas) should have said that he would take away the traders and salters navigated from this river to the Orinoco, that he would also come to fetch away his comrade, and many other threats, whereupon the Commandeur, so soon as he had received news of his arrival in this river, sent off a Commando to the lowest places where he had arrived, with orders to apprehend him and bring him to the Fort Kijkoveral, where he has been placed in the gaol, and to-day, being brought before the Council and heard in his defence, he has denied all the accusations which have been scattered broadcast to his charge, and only confessed that instead of bringing the slaves belonging to his comrade to him, he had gone with them to Martinique, and had sold them to his advantage. ”

This was the man who had been given permission (he was a colonist of Essequibo) to go to Barima. He had gone there, had violated his pass, and gone off to Martinique, and when he came back he was treated in this way. And this is one of the few instances, as I say, to which I shall later point showing the existence of Dutch trade, or presented for the purpose of showing the existence of Dutch trade, in this Barima region.

Lord Russell. — It is a little more than that. As far as exercising jurisdiction over him is concerned, he was a Dutch subject.

Mr Mallet-Prevost. — He was a Dutch subject.

Lord Russell. — But they sent to apprehend him in that place.

Mr Mallet-Prevost. — Where, my Lord?

Lord Russell. — I understand that he was apprehended as soon as he arrived.

“ Whereupon the Commandeur so soon as he had received news of his arrival in this river — ”

What is that river?

Mr Mallet-Prevost. — That is the Essequibo, my Lord.

Lord Russell. — Yes, you are quite right.

Mr Mallet-Prevost. — And that brings out a point which I had in my mind, and which I did not think it really worth while to call the attention of the Tribunal to, and that is that so long as Cauderas remained in Barima nothing was attempted to be done with him, although he had violated his pass, but the moment he came back to Essequibo he was arrested and he was treated in this way.

There is another passage which I shall refer to, only in passing, which relates to the year 1739 and which is to be found in the Appendix to the British Counter Case at pages 185 and 186; opposite E and F on page 185 and at the top of page 186. That relates to the French at Barima. Another reference which is in the Venezuelan Case volume 2 at pages 44 and 45 I have already read. It is a reference to Gabriel Biscop, who was a Surinam trader in Barima and also to page 47 of the same volume, relating to the same man.

Referring to the year 1760, I want to mention in this connection also the events which we have considered that year, namely the Surinam slave traders who were in Barima and for whose capture a Spanish expedition was sent out, the reference being to the second volume of the British Case Appendix, at pages 194 and 195.

In the year 1764, we have again the notice of some possible Surinam rovers there referred to in the third volume of the British Case at page 114, between C and D, and being the same which formed the subject of a communication from the Governor of Essequibo to the Governor of Surinam, in which communication the Governor of Essequibo complained about their remaining in Essequibo instead of their going on to Barima.

These are the extracts which I cite from the evidence, Mr President, for the purpose of establishing the fact that the Company did not in fact exercise any exclusive jurisdiction of trade in this region.

Having answered therefore the two questions which I formulated when I began to discuss this question of trade, I propose now to pass on and to say a few words in answer to a further question and that is what was the trade of the Company? As has been pointed out, on more than one occasion, the Essequibo post originally established as far back as the year 1626 was a mere trading post. It continued as a trading post for a great many years. It was for a long time regarded as an outpost from the home Company. Trading was carried on at the post itself, and when, years after the Treaty of Münster, a postholder or an outlier was sent to Pomeroon, we have there what was the first effort of the Dutch Company to extend its radius of trading beyond the immediate confines of the Essequibo itself.

In the year 1670, Hendrik Rol was sent out to Essequibo as the Commandeur and he was the first who introduced as a policy of the Company the trade to more distant places, and it is in the year 1673 that we have the first notice of trade to any distant point, a trade which began to the Orinoco. I now propose to call attention to this fact. A great deal has been said about the trade of the Essequibo colony, and the impression has been given that this trade was a trade into this disputed area.

As a matter of fact, Mr President, it was a trade which was almost wholly with the Spaniards of Orinoco, and such trade as there was to the intervening territory, to this disputed territory, was incidental to that main trade and can be comprehended, and can be summed up in a dozen

instances covering the whole period of Dutch occupation, my statement having reference now, of course, to the coast region.

The trade to the Orinoco began about the year 1673. It continued with some interruptions until about the year 1684. It was then ordered to be stopped, by the Company. Between the years 1684 and 1688, there is one instance of trade to the Orinoco, and that instance is in the year 1686. Between the years 1688 and 1697 there was war between the French on the one side and the Dutch and the Spaniards on the other. Conditions of war existed and there was a complete cessation of trade between the Essequibo and the Orinoco. Trading began again in the year 1697, and it continued with some interruptions until the year 1701. Then came the war of the Spanish Succession, and there was a complete cessation of trade from the year 1701 until the year 1710. We find that trade began again in the year 1710 and it continued until the year 1745. There was a stoppage from the year 1745 until 1755, and in the year 1755 it began again. It continued until about the year 1760 or 1761, and from 1761 until 1814, when this Colony became vested in Great Britain there is no record of any trade whatever either to the Orinoco or to this coast region.

I propose now, by reference to the evidence, to make good the statements which I have made; and I want, in the first place, to point out the fact that the great mass of this trade was a trade to the Orinoco, a trade to Trinidad, a trade with the Spaniards themselves upon Spanish territory. There is an incident prior to the year 1673, which is the first actual notice that we have of trade, which is indicative of the fact that this was the very beginning. I want to refer to an incident which is recorded in the first volume of the British Case Appendix at page 173. I read at the top of that page, at letter A. This is in the year 1671 and it is an extract from the Proceedings of the West India Company.

“ That the Chamber has understood from Jacob Hars that on the aforesaid coast a good craft is very necessary, in order to be able to visit the nearest lying rivers there for the increase of the business in the annatto dye, and for other things.

And I state that this is the first suggestion that we have of any means for carrying on trade at any distance from the Essequibo itself. In the year 1671, it is suggested that the colony be provided with some craft for that purpose, and then on the same page under the year 1673, we have the very first mention which there is of this trade to Orinoco or to any other place.

Lord Russell. — Is there any continuous record either from the Dutch or from the Spanish point of view, — there appears to be very little Spanish record, but is there any continuous Dutch record at all, or is it only confined to particular periods?

Mr Mallet-Prevost. — It is a very continuous record, and I propose to show that, by the references which I shall now cite, my Lord.

Lord Russell. — Between what dates?

Mr Mallet-Prevost. — From the year 1673, practically, on.

Lord Russell. — From the year 1673 on?

Mr Mallet-Prevost. — Yes.

Lord Russell. — Continuous and regular, you think?

Mr Mallet-Prevost. — Such as it was. I do not mean to say that there was trade every day of the year, nor every year; but I mean to say that such trade as there was, we have a record of it.

Lord Russell. — I am not speaking of the trade, I am speaking of the record.

Mr Mallet-Prevost. — Your Lordship means the record of the history of the colony itself?

Lord Russell. — Yes.

Mr Mallet-Prevost. — I think the records are very full. There are one or two volumes missing, but, on the whole, I think that I answer truthfully when I say to your Lordship that the record may be regarded as full. I do not mean to say that there is not anything missing, but I do mean to say that we have in the records what may be considered a fair and a full history of that colony, and not only from the year 1673, but prior to that date. I mention the year 1673 because I am now speaking of the trade then.

General Tracy. — Is not the record continuous from the year 1673 on?

Mr Mallet-Prevost. — I think for one or two years the record is missing, but I do not recollect what those years are.

Mr Soley. — It is prior to 1670.

Mr Mallet-Prevost. — It is prior to the year 1670 that the record is missing, and therefore it is complete from the year 1670 on.

Lord Russell. — It is?

Mr Mallet-Prevost. — Yes, my Lord.

Sir Richard Webster. — I do not think that is quite accurate, but I do not want to interrupt my learned friend.

Mr Mallet-Prevost. — I am glad to have you interrupt me, Sir Richard, I want to have the truth of this matter. If I am mistaken, please correct me.

Sir Richard Webster. — I do not think the record became at all continuous until after that period.

Mr Mallet-Prevost. — 1683?

Sir Richard Webster. — Yes, I say they are not continuous until after that period of 1683.

I also say that they are not continuous after that period, but they do not begin continuously even before that period.

Mr Mallet-Prevost. — I do not want to acquiesce in the Attorney General's statement, but I am very glad to have him throw light on the subject. Two or three years one way or the other makes very little difference. I am dealing with large periods of time. I am dealing with a period covering more than a century.

Lord Russell. — Yes.

Mr Mallet-Prevost. — Now at page 173, we have a reference to what I say is the first record of any trade to any point along the coast distant from Essequibo :

“ There was read the private or secret letter from the Commandeur Hendrik Roll, from Rio Essequibo, under date of the 16th March, 1673, wherein the following points were noticed, which it was resolved to insert here :

Peace had been made with the Caribs in Barima and the Arawaks, and they had intercourse with each other and he was going to send a boat after carap-oil, intending in the meantime to make trial of the linseed oil.

He had sent some wares to Orinoco for the purpose of trade; by mistake these were carried to Trinidad, and, no opportunity being found to trade there, they had come back home.

Since that time the people of Orinoco have requested that we should go there to trade, whereupon he has resolved to send thither Steven Tornaetje with an old negro who knows the language well. ”

This is the first reference to trade to the Orinoco and it is one of the few instances of trade to the Barima : but I think it will be clear even from this reference that the trade to the Orinoco was here the main thing. It was the beginning of the trade to the Orinoco. The trade to the Barima even as referred to here, is evidently a mere incidental matter, but about that I shall have more to say hereafter. I am now dealing with the fact that this was the beginning of the Orinoco trade.

At page 176 of this same volume, opposite to A, there is this :

“ In regard to the trade in Orinoco, for which your Honour is putting forth every endeavour, it would be good if we could get it, but with regard to the lure of the Spaniards, who invite you to bring there some material of war for the King, and under that pretext to get the trade, it must be considered whether this might not, perhaps, at some time be harmful to us, putting in their hands a knife to cut our own throats. Therefore we recommend you to give good heed thereto. ”

And coming down chronologically to the year 1675, there is a reference in the second volume of the Venezuelan Case at page 36 at the bottom of that page :

“ Furthermore we have been glad to learn that a certain Spanish nobleman having come over with our Snaauw from Surinam to be transported to Rio Orinoco, you had caused him to be carried over in a canoe manned by Indians, giving him for companion and guide Jacobus Asseliers, with a view thus to get an opportunity to obtain trade there, ” —

that is, in the Orinoco. —

“ but that the latter, arriving there at the Spaniards’ landing, had found a great crowd, as the Governor of Trinidad was present there, and was forbidden to set foot on land before he had received an order from the said Governor, who, in fine, shortly after ordered him to depart from there within 24 hours leaving him free, however, to go among the Indians, wherever he pleased; further, the said Governor, having gone from there, had through the captain left in command, and the contador and others besides, rendered thanks to you for the kindness shown to the said nobleman, but adding that he did not yet dare to trade freely because no letters had yet come from Spain, though such were every day expected, together with a new Governor, and that he trusted that when these had come we probably should obtain permission to trade; and that they had bought the small stock of wares which you sent along, he inviting As-seliers to come again, yet not to their own landing, but to an Indian one, and make known his arrival to them, promising that they would then come to buy from him the aforesaid goods. We have no doubt that accordingly you have caused a second trial journey to be made with satisfactory result, of which we hope to learn by your next; and that it will serve as a firm foundation of flourishing relations and trade with them, to the advantage and profit of the Company and those interested in it, as also to the praise and renown of your vigilance and prudent management. ”

In the year 1677 there is a reference in the first volume of the Appendix to the British Cass at page 181. I read from opposite letter C; this is a letter from the West India Company to the Commandeur of Essequibo :

“ You will do well to send hither by this ship some of the balsam that is there, unless it might be disposed of to greater advantage and profit on the River Orinoco, where the trade should be kept up as much as possible, and we shall hope to hear, through your letters, from time to time, of your success in the matter. ”

And as I read these passages, I want to remind the Tribunal that we are here reading the record of transactions of a commercial Company, and I am selecting these passages because they show a considerable trade to the Orinoco, and then when I come to deal with the similar reference to the trade in this region it will be shown how meagre they are.

At page 181, the same page, of this first volume, is a reference to the trade in the year 1678. I read from opposite D.

“ And inasmuch as we have received reliable information that on the Orinoco a good trade [could be established with the Spaniards, we shall by next letter expect a list, or petition, of the goods and merchandize required therefor, together with a specification of the goods and effects that might be got in exchange ; ”

and I might in passing just call attention to a thing that occurs to me at this moment, that a point I think was made at one time, I am not quite sure whether it was afterwards abandoned, by the Attorney General, that the fact that a trade was by barter proved that it was not with the Spaniards —

“ how and in what way the aforesaid trade is carried on there, whether by the Governor, by private inhabitants, or, perhaps, by the natives of the country; what craft is ordinarily used therefor; and all further particulars, about persons, place, time, and season, so that we may take our measures accordingly, and that you will especially have to take good care that the river may be navigated by no other ships than those of the Company alone. ”

I read, Mr President, as part of this extract this morning in connection with the exclusive right of trade, but I read it now to show that it has reference to a trade with Orinoco. Then at page 182, opposite to C there is this : —

“ As regards the trade in Orinoco, it would succeed satisfactorily if only I were properly supplied with wares, ”

and then lower down on that page just above the letter E there is this : —

“ This trade must, as much as possible, be kept secret, that strangers may not spoil it. The Spanish brandy is very acceptable there, also the fine linen and the scarlet cloth; for the other things there is no demand. Great profits may be reaped there if the business be well managed — above all, we must stand well with the Spaniards, for else they will not buy.

Then at page 183 is another reference relating to the year 1680, and although the Attorney General was good enough to say that these records were not very complete until after the year 1683, I think we find that there are a good many references to the trade to the Orinoco before then, at least they are full enough with regard to this particular branch of the trade. There is this on page 183, opposite B : —

“ Trading to Orinoco must, to give least umbrage, be carried on by canoe. ”

Of course, it was a surreptitious trade; we know that.

“ On the 14th November of last year, I, for the third time, sent there a soldier with a canoe manned by Indians, [and] with a fair stock of goods. He was well received by the new Governor and clandestinely allowed to carry on the aforesaid trade, and favoured to such an extent, although at that time the silver had already been taken to Trinidad on account of my long delay for lack of the necessary stock, ” etc.

Now will the Tribunal kindly turn to the second volume of the Venezuelan Case at page 40 ; at the bottom of the page. There is this, which relates to the year 1680 : —

“ The condition of the trade with Orinoco is as described in my accompanying letter of the 16th of April last, and I refer you to the list of goods and wares therein asked for, which request I hereby repeat since the time set me by the Governor for the next trip will have expired by the coming September. I hope that, he having by that time returned from Peru, whither he went some months ago, I may then have good success in my trade on behalf of the Company. Herewith goes under No 9 the account in profit and loss — ”

Sir Richard Webster. — This is the same extract that you have already read from page 183. It is another translation of it.

Lord Russell. — Yes, “ when he will be back from Peru ”.

Sir Richard Webster. — It is the one you have just read, Mr Prevost.

Mr Mallet-Prevost. — Yes. I had no intention of duplicating it. It was entirely an oversight on my part. I had probably overlooked it owing to the difference in the translations, and when collecting the evidences of trade, I had not noticed the identity of the two passages. I am much obliged to Sir Richard for calling my attention to it. In the first volume, to go back for a moment to the Appendix to the British Case, on page 184, in the year 1681 we have this statement, between letters B and C :

“ As for the trade in Orinoco, it has turned out ill and deplorably this year, since, in the place of the old genial Governor, there has come another very ill-natured, and a kinsman of the one of Trinidad. Not only did he prohibit the trade, but he even caused Pieter Laman, who in January last, was sent there by me to trade for the profit of the West India Company, to be put in irons, together with one of the Company's old negroes, although, according to their report, they had given not the slightest cause. ”

And I think I am not referring to the same passage this time when I call attention to another one in the second volume of the Venezuelan Case, which relates to the same year 1681, at page 41 :

“ But, as regards the trade on the Orinoco, we have resolved to continue it, and to send you for that purpose such wares as are needed therefor, and are ordered by you, except the red cloth and the Spanish brandy; and we are expecting a good return from the aforesaid slight cargo. ”

And on page 42 of the same volume, we have this further statement relating to the same year :

“ We are sorry that the trade on the Orinoco has turned out so badly. When you begin it again, it should be taken in hand and carried through with caution, so that the Company may suffer no loss. ”

At page 44 of the same volume there is a reference to the year 1683, near the top of the page, the second paragraph :

“ The trade to Orinoco has been passably successful this year, and for lack of proper wares I have been able to undertake only one voyage thither. The head man there urged a speedy second trip, which in due season, I shall undertake again with hope of good success. ”

And on the same page just below, we have this further statement :

“ In January last Mattijs Bergenaar made a fruitless voyage to Orinoco, having traded nothing, inasmuch as the Governor of Trinidad might arrive there at any time and this commander was a stern man and his kinsman. The soldiers there had forced the fort and carried off a deal of silver but some of them, being afterwards caught, suffered the penalty for this audacious deed on the gallows, ”

and so on.

Now this takes us to the end of the year 1683 and in the year 1684 the West India Company ordered the Commandeur of Essequibo to stop this trade. I have read the passage a number of times and shall only now refer to it. It is in the second volume of the Venezuelan Case Appendix at page 50 and this is what he said :

“ We find it advisable that you stop it and neither trade thither yourself, nor permit trade thither directly or indirectly until further orders, since we are of opinion that the Company bears all the expenses and burdens and that others help themselves to the profits. ”

And, without troubling the Tribunal to turn to it, also in the first volume of the Appendix to the British Case at page 187 is a statement by the Commandeur himself to this effect :

“ Inasmuch as the trade to Orinoco has by reason of this

invasion come to an end of which trade a detailed account will be submitted to you by the next homeward bound ship ",

and so on.

The stoppage of this trade which had been ordered by the Company was subsequently approved by the Company as will appear by reference to page 52 of the second volume of the Venezuelan Case and except the one incident in 1686 we find no record of any trade whatever to the Orinoco or this intervening region till 1697 or a period of twelve years. In 1686 there is one reference to it in the First Appendix to the British Case at page 200.

Lord Russell. — Are there records during that period?

Mr Mallet-Prevost. — There are, and it was stopped for reasons I suggested. In 1684 the Company ordered it to be stopped and it was stopped and then the French came and during those years the records of the Company are very full and there is not a single mention of any trade to the Orinoco or this district.

Lord Russell. — You still limit it I suppose?

Mr Mallet-Prevost. — Yes, still limiting it to the coast region.

Now at page 200 there is this statement opposite D. This is a statement by De Jonge, and the Tribunal will remember that he was the Commandeur of the Pomeroon Colony from 1686 till 1689 :

“ The goods sent for, which I, as per accompanying Memorandum, have sent for, is simply wherewith to obtain some red slaves, oriane dye and vessels, and provisions, and whatever turns up. But if Y. H. be pleased to send further wares in order to make a journey as occasion offers to Orinoco, for which Y. H. will be pleased to send, also other wares, in order to traffic among the Spaniards there. ”

That is the only reference during all these years to any trade.

Now passing these because there is nothing that side of the year 1697 I call the attention of the Tribunal to some other passages, the first of which will be found at page 213 of the first volume of the Appendix to the British Case, line E. This is from the Commandeur to the Company :

“ Again, you wish to know at what price I could dispose of them ; of this also I cannot inform you, inasmuch as almost all the plantations of the free planters are sufficiently provided with horses, and, if they need any, they have them got from Orinoco, at quite as low a price as is paid for the horses bought for you up in Cuyuni — ”

That is the first reference to a trade in the Orinoco and two years later in 1699 we have a reference in the Appendix to the British Counter Case in the official diary at Kijkoveral, covering two years, to be found at page 73 :

“ December 15. This morning there appeared the Company's planter”, and so on.

“ In the forenoon there arrived here Johannes de Graef, the runner of the plantation Oosterbeek, who, after a passport had been granted him, set out with a canoe and some Indians for Rio Orinoco in order to purchase some boats. ”

And at page 84 of this same volume, also in this diary, there is another reference opposite C under date, February 2 :

“ Early this morning there appeared here the Owl Awaij, the old negro trader Jotte, and some other Indians ; to the said Jotte, as well as to the sailor Jan Jansen, some trading wares were delivered, and together therewith instructions were given them to dispose of those goods in Orinoco, whither they are setting out. ”

And then at page 93, near the top of the page under March 25, we have this statement :

“ Occupied the whole day in dealing out to Simon Paulus and Jan Theunissen trading wares for Orinoco, writing some letters to Surinam, &c., upon which said journey to Orinoco the above-mentioned persons set out about midnight. ”

At page 105, opposite B, under June 21 :

“ About midday the yacht Rammekens comes to anchor off the Fort, and the skipper proceeds on shore in order to render an account to the Commandeur of his voyage to Orinoco and Trinidad, and of what befell him in Martinique, where he was obliged to put in for twenty-four hours by stress of weather and the force of the current. ”

And at page 109, opposite C, under June 30 :

“ In the afternoon the Sergeant, together with the persons assigned him, set out with the canoe for Rio Orinoco. ”

Again at page 131, opposite D, under December 24 :

“ At the opening of the gate there arrived here from Trinidad, with their canoe, the free colonists, Jochim and Adrian Borreman, who had been out in partnership, and complaining, like all others, about the bad trade there. ”

Lord Russell. — How did they get with their canoe from the Essequibo ?

Mr Mallet-Prevost. — I think very likely by inland passage and what trade they got was an incidental trade — the main trade being with the Orinoco. It is a most significant thing in connection with this diary (and

for two years it was kept) there is not a single reference to trade in Barima or in Waini. This record is most minute and I have no doubt the Tribunal has noticed it. Whenever a Commandeur left the island to go and visit somebody up the river for an hour it is noted and yet there is no note of Dutch trade on the coast except trade to the Orinoco.

Mr Justice Brewer. — There are entries such as this that Indians on such and such a day came in.

Mr Mallet-Prevost. — I am going to take that up. They have reference to the interior.

Mr Justice Brewer. — There is nothing to show where they came from?

Mr Mallet-Prevost. — No; but there is plenty to show what trade there is to the Orinoco and also a reference to the trade in the Cuyuni and Masseruni. I shall refer to that when I come to deal with the interior but in the Barima there is nothing.

The President. — Will you allow me to put to you one question? If these records are not quite complete, and I think you said so?

Mr Mallet-Prevost. — No, the Attorney General said they were complete from 1686.

Sir Richard Webster. — They are certainly not complete as appears on the face of them, but after 1686 they are more complete than previously.

The President. — Well let us say they are quite complete, are they sufficient to give us an idea of the whole policy?

Mr Mallet-Prevost. — I think so. This is a trading company, not a colony such as Essequibo is to-day where questions of trade do not enter into the question of the Government. It was essentially a trading company and this very journal from which I am reading shows that an accurate record was kept of everything; the Commandeur reported everything, and the Tribunal will see from the extracts, it is full enough as to the Orinoco trade, and it is remarkable if it is full as to the Orinoco trade that there is so little as to the Barima trade.

Lord Russell. — You must bear in mind your comprehensive meaning of the word Orinoco that it means the district north of the Moruca.

Mr Mallet-Prevost. — If the Tribunal is willing to accept that, then I am very glad of it.

Lord Russell. — I do not suggest the acceptance or the refusal of it, but you cannot for one purpose put a limited meaning on "Orinoco and for another purpose an enlarged meaning."

Mr Mallet-Prevost. — I am only too glad to put the broadest meaning on it which I ever suggested for Orinoco. All the extracts I have referred to as to the Orinoco in relation to the trade with the Spaniards is where it says Orinoco and if this is to include the Barima then it is a trade with the Spaniards in Barima. The broader the words the better it is for me.

Lord Russell. — Would you tell me what are the two years covered by this diary?

Mr Mallet-Prevost. — From 1699 to 1701.

Now leaving this diary for a moment, but not setting the volume entirely aside there is one entry in the first volume of the Appendix to the British Case page 214 which comes in in order of date ; it is a letter from the Commandeur to the West India Company, opposite B.

“ Inasmuch as, when Captain Evertsen came back from Barbados, we could not get him a passport from the Governor there for the yacht “ Rammekens, ” although the said Captain, and our late Secretary as well, had, in our name, repeatedly made the request, but been very politely refused, and for the same reasons as by yourselves, we thought it to be to the interest of the Company to let the said yacht make a short cruise to Waini to salt fish, wherein the desired success was not achieved, and with its return thence we resolved to send it again on a voyage to Rio Orinoco and Trinidad with a goodly quantity of knives, abundant here, and getting rusty, in order to exchange these wares for cocoa. But this also did not turn out as we desired, and produced no results. ”

This while referring to trade with Orinoco contains one of the very few references to trade in another region, namely salting in the Waini.

Now coming back to the British Counter Case Appendix at page 140, under date of February 9, is the next entry in order of date at bottom of the page :

“ This morning some trading wares and provisions were dealt out to Simon Paulus, the assistant, for the journey which he is to perform to Orinoco, principally for the purpose of collecting the outstanding debts due to the Company left behind there by the late foreman, Jan Jansen, and with which he is to return here as speedily as possible. ”

And again at page 150, under date of April 11 at the top of the page :

“ Have been continually engaged in getting papers ready, and Simon Paulus, the assistant, arrived from Orinoco, without bringing anything with him except some “ Cassepanes ”. The carpenter is still unwell. ”

That strikes my eye and shows how detailed this record is.

I think we can now leave the Counter Case Appendix and come back to the first volume of the Appendix to the British Case, at page 234 at the top of the page; this is from the Commandeur of the Company in 1710 :

“ I have appointed for this object a certain person, one of Y. H.'s oldest servants, named Jan Antheunissen, since he is a trusty and vigilant young man, on whom one can and may

rely..... After the departure of the " Prins van Orangue " he intends going shortly to Orinoco to see if he can again bargain for a good quantity of balsam oil, as he was lucky enough to do before the arrival of the ships, obtaining over 700 stoops. "

And at page 238 we have another reference, at the top of the page, relating to the year 1714 :

" In the month of September of the past year I received information through an Indian that a certain Christoffel Berkenbosch some little time before had asked for a passport to trade for vessels in Orinoco. "

In the second volume of the Appendix to the British Case, and I cite this passage because it shows how full the record is of trade to the Orinoco and I want to impress that upon the Tribunal, opposite E, page 4 :

" Our Lords and Masters the Directors of the Chartered West India Company having ordered us to purchase in Orinoco some slaves and balsam for their service here we send two of their servants ",

and so on; and again on the same page just above, opposite C :

" The Court having taken into consideration the fact that Jan Batiste had up to the present been prevented from going to Orinoco for want of bread, and that this was now ready, it was resolved to send him off to-morrow to see whether he could obtain permission from the Governor to proceed up the said river to buy "

so-and-so and so-and-so.

Then at the bottom of the same page is another enclosure in the same document, but which relates to another transaction. Article 3, at the top of page 5 :

" Permission for this business having been granted by the Governor, Jan Batiste shall present the Governor of Orinoco with a barrel of sugar — "

and so on.

I recall the object that I had with reference to this particular reference. It was mentioned by the Attorney General and I want to consider it at this time. This Jan Batiste was sent to the Orinoco with instructions to trade, if the Governor would allow him; if the Governor would not allow him he was to be pleasant and polite, but not to give the presents and to go down to the Aguirre to trade. It was cited by the Attorney General as proof that the Spaniards were not exercising any jurisdiction in the Aguirre and they could trade where they pleased and it only required the permission of the Spanish Governor to trade when it was with Santo Thomé itself. About this time there is an account of an occur-

rence recorded in the third Volume of the Counter Case of Venezuela which throws light on this point and I digress for a moment from the question of trade to show the Spanish jurisdiction in the Aguirre and to rebut the argument of the Attorney General in that connection. This relates to the year 1730. I have been speaking of the year 1726 so that it is practically about the same time. At page 29 of the third Counter Case Appendix of Venezuela you will see :

“ Having succeeded in politely expelling Don Nicolas Hervasio, Titular Bishop, of French nationality, from the City of Guayana, where he arrived and landed with the intent to found Missions, a college and other establishments, for which he was authorized by virtue of apostolic bulls, and having sent him to Berbiz, a Dutch colony, as I have already reported to Your Majesty, together with said bulls and proceedings instituted in this case; he returned a second time to said Province of Guayana, entered and took up his residence on the coasts and shores of Aguire, which is one of the mouths of the Orinoco, in order to issue from there the command to convoke the Indians and realize the fulfilment of his Apostolic zeal. My Lieutenant having informed me of the facts, I was about to go again to said city to continue my objections and refusal to let him put in practice the authority with which he was invested by reason of said bulls, both because they have not the approval of the Royal Council of Your Majesty as provided in the Royal Laws of these Indies, and because I plainly saw the damage and injury resulting thereby to the lawful domain of Your Majesty over all the kingdoms of this America, as also to the peace, tranquility, and preservation of said city of Guayana. Had the Bishop established himself in this manner with those of his nation, they would have easily penetrated into the Kingdom of Santa Fé.

“ But before effecting my embarkation to proceed on this errand I received a second report from my said Lieutenant stating that the Carib Indians in said river Orinoco had put to death the said Bishop Don Nicolas Hervasio and his household, taking away with them two negroes, servants of his, desecrating and tearing his sacred garments, and looting and carrying away everything. This news I have received from said Lieutenant and I hold it as true, particularly since the Most Illustrious Bishop of this Bishopric, who went to visit said Guayana, heard it from some Indians, friends to said French Bishop, and who brought some pieces of his garments or vestments which were identified as having been seen when he first came to Guayana, as well as the consecrated stone of his altar, although it had been in the fire. Said friendly Indians asserted that they had buried him on the shores of said river Aguire. I am trying to

go to said province to make inquiries and to seize the treacherous perpetrators of such sacriligious murders to punish them as they deserve, and to ascertain with certainty the spot where the bodies are interred, to have them taken to Guayana in due time where the obsequies and funeral rites corresponding to the dignity of said Most Illustrious Bishop shall be performed. ”

Now in that connection this matter as the Tribunal will see was reported to the King and the King made an order which is at page 39 of the volume from which I am reading. The order recites the facts as I have read them and then (turn over to page 40, one third of the way down) we come to the important parts of the order :

“ And in view of the opinion of my Council of the Indies and the advice of my Attorney, I have resolved to command you (and do hereby command you) to proceed to the seizure of the Indians who have taken part in and committed the murders, continuing in the proceedings which you state you have commenced, and dealing with them as you may judge proper, displaying the greatest prudence in all things and employing such means as you deem most adequate and efficient to check such actions; and you shall report to me at the earliest opportunity all that you have done in this matter as well as the steps you judge more imperative and necessary to this end. ”

Now I want to show what the result of that expedition was.

Lord Russell. — Well, is it necessary? You have shown an assertion of jurisdiction.

Mr Mallet-Prevost. — The result is somewhat important, my Lord.

Lord Russell. — It is outside the line here.

Mr Mallet-Prevost. — But I made the allegation by the Attorney General —

Lord Russell. — It is quite enough to say you think it necessary to read it.

Mr Mallet-Prevost. — There is a point here in connection with the Indians which I want to emphasize; what was done to drive the Indians out; and subsequently the murderers of this man came and submitted themselves to the Spaniards and promised obedience to them and I wanted to point out those facts, in the Appendix to the British Counter Case at page 177.

Lord Russell. — Is not the statement of those facts enough?

Mr Mallet-Prevost. — Then, without reading it, I will refer to the Appendix to the British Counter Case, page 177 opposite A and B and for the identification of the Carib chief who is named Yaguarua I want to refer to the British Counter Case Appendix, page 167, opposite B. If after examining these documents any inference can be drawn from this supposed trade to Aguirre that the Spaniards were not regarding the Aguirre as in their jurisdiction let it be drawn.

Chief Justice Fuller. — Can you state what year it was the Captain-Generalcy was created.

Lord Russell. — This is another name for Governor, is it not?

Chief Justice Fuller. — I see this general is described as Governor and Captain General.

Mr Mallet-Prevost. — No, I cannot answer your Honour, I will make a note of it, but I cannot answer it off hand.

This brings us down to the year 1731 and in connection with this question of trade I want to call the attention of the Tribunal to a document in the Seventh Appendix to the British Case at page 179. It is a list of trading expeditions which I think is very important in this connection and I will ask the Tribunal to look at it. There is a list of trading expeditions from that year 1721 down to the year 1745 and at the very end there is a reference to the subsequent period 1752 to 1755, but the trading was fairly continuous up to 1745.

Now will the Tribunal kindly note to what places these expeditions went. The word Orinoco occurs eight times, the sea coast is mentioned a number of times and of course that means the sea-coast immediately in the neighborhood of Essequibo. If it had been the Barima it would have been mentioned distinctly by name as it was on every occasion when any trade was done in Barima. The interior region is mentioned a number of times, but I want to call the attention of the Tribunal to this that though we have a repeated mention of Orinoco there is no mention of any trading to the Waini, Barima or Essequibo.

Lord Russell. — How could the traders go from Wacupo to the Orinoco?

Mr Mallet-Prevost. — Through the inland passages.

Lord Russell. — And finally out by the Barima?

Mr Mallet-Prevost. — Yes; he would pass those places, he was not going to trade in Barima, he was going to Orinoco to trade; that was his objective point; that is the purpose he went out for.

Lord Russell. — The river.

Mr Mallet-Prevost. — It was to trade with the Spaniards. That is stated over and over again.

Now from 1745 to 1755 with the exception of possibly one or two incidents there appears to have been a stoppage of the trade. In the year 1755 we have it renewed again; the reference to that year is in the second volume of the Appendix to the British Case, page 103 opposite E.

“ This was confirmed by the unanimous information received from both Orinoco and Barbadoes so that our vessels are again beginning to sail to Orinoco; ”

There had been some stoppage of the trade and such inland trade as was carried on in canoes was undoubtedly the trade which was carried on in the interior. This trade was with Trinidad;

“ Our vessels are again beginning to sail to Orinoco, one

barque of I. Courthial's and a canoe with cattle having already returned thence; ”

and at page 121 of this volume —

Lord Russell. — If I may interrupt you, will you turn back again to page 182 of volume VII. You were giving that list of expeditions and I want to get some information about this.

Mr Mallet-Prevost. — That is all I am anxious to give, my Lord.

Lord Russell. — A delivery of rum to the postholders at Arinda, Maruca and so on; and a little way down, Orinoco, and again Orinoco. Bearing upon that point what is the meaning of Orinoco there? There is Arinda, Maruca, and then Orinoco and Orinoco with a star,

“ clearly a synonym for the Moruka post. ”

Mr Mallet-Prevost. — I think that is right, my Lord. There was no postholder in Orinoco and whether that is a misprint or a misinterpretation of the original it very likely means the Moruca, but that in no way militates against my argument.

Lord Russell. — I did not ask for information to meet your argument. I only want the fact.

Mr Mallet-Prevost. — I think the explanation given in the British Case is correct. It is a mistake for Moruca, but the references I have given as to Orinoco are open to no question because it is a trade with the Spaniards.

Lord Russell. — In some instances it is mentioned but not in others.

Sir Richard Webster. — That is our note as to those two words. We think it is the same as Moruca.

Lord Russell. — That is what I understand.

Mr Mallet-Prevost. — Yes, I agree in that. I think it is correct.

Sir Richard Webster. — Our case is and will be that all this trade of the district was done from the Moruca post and we will show it from the evidence.

Mr Mallet-Prevost. — It is rather a difficult thing to show.

Chief Justice Fuller. — The introductory note says that the rum was delivered at Moruca and Arinda.

Lord Russell. — That is delivery at those posts.

Mr Mallet-Prevost. — Now I was about to call attention to page 121 of the 2nd volume of the Appendix to the British Case opposite D :

“ Your Lordships' canoe has just arrived from Orinoco with ten mules. The people on board report to me that the place swarms with soldiers and boats. ”

That is the passage I had in my mind yesterday when Lord Justice Collins asked me a question as to the population of Orinoco and I referred to the expedition of Iturriaga, at that time, and to the large number of people there.

Lord Russell. — At some time or other I should like to know what was the population at the end of the 17th century and the beginning of the 18th of what are now the United States of Venezuela,

Mr Mallet-Prevost. — The whole country, my Lord?

Lord Russell. — Yes; excluding all territory south of the Orinoco.

Mr Mallet-Prevost. — I think very likely I shall be able to get that for your Lordship.

Lord Russell. — Yes; and its population today as well as its extent. I should like that also.

Mr Mallet-Prevost. — In miles?

Sir Richard Webster. — I think there is a Venezuelan paper that will give it to us. I know that there has been published an area and a population. I saw it in connection with an official map and I am sure we can get it.

Lord Russell. — I know there is a magazine article or newspaper article about it.

Mr Mallet-Prevost. — I do not know that, my Lord, but any information I can get on the point I shall be glad to lay before the Tribunal, and if the learned Attorney General has anything that bears upon the point I should be glad to have it.

Sir Richard Webster. — I am speaking of the present day. Two or three years ago the United States of Venezuela published a map with the statement of their population in the margin. I will try and get it but whether it goes the whole length or not I do not know.

The President. — Is it in the Almanach de Gotha?

Sir Richard Webster. — You see Colombia has separated since and that is rather larger than Venezuela. I have no doubt the Marquis de Rojas can get it.

Mr Mallet-Prevost. — Now volume II, page 121 ;

“ Your Lordships’ canoe has arrived with ten mules. ”

I read that. Now that was in the year 1755, and I stated this morning and I repeat, that this trade came wholly to an end about the year 1760 or 1761. From that time on to the end of the century and to 1814 there is no record of any trade either to the Orinoco or to any region.

Lord Russell. — There must have been some trade I suppose.

Mr Mallet-Prevost. — None; except that carried on by the Spaniards. You naturally would suppose there was a record, after the way the case has been presented, but there is no record.

Lord Russell. — There must have been trade and I was not thinking of the case.

Mr Mallet-Prevost. — Yes; but it was trade by the Spaniards. When they traded here it was a clandestine trade of which there is no record; a trade carried on by individuals and not a trade carried on by the colony of which, as I say, there is no record.

Now in that connection I will call attention to page 199 of the 2nd vol-

ume of the Appendix to the British Case, opposite C : This is a statement by the Director General, at that time Storm van s'Gravesande. He is referring to the trade to Orinoco and to the region west.

“ That trade is now at an absolute standstill because everything in Orinoco being in disorder the Commandant having been summoned to Cumana to answer several charges brought against him no boats dare to go to that place, and none being allowed to come here the people who have always devoted themselves to this trade are left with their stocks in a case of great embarrassment; ”

showing that the Directors themselves had not anything to fall back on in this territory. If this had been a trade going on in the Waini and Barima and if Waini and Barima were Dutch territory and if the Dutch Company was controlling that territory what had Spanish affairs to do with that? Why should that trade come to an end because the Spanish Governor had been found fault with by his own Government. Why should it come to an end because of anything that the Spaniards had to do.

Lord Russell. — I suppose apart from the Spaniards the only other people who could trade were the Indians and the sparsely scattered Dutchmen?

Mr Mallet-Prevost. — I am afraid they were very sparse, my Lord.

Lord Russell. — Very likely, and if the state of things at Santo Thomé was such that no trade could be done then it would naturally embarrass it. When it says the Orinoco was in disorder it does not mean the river?

Mr Mallet-Prevost. — No, my Lord, it means the Spanish settlement. If that is the explanation and it is to be supposed that there was theretofore a trade and it stopped and all the energy that was in this trade was turned into the Barima where is the record of it. I state right here that there is not a sentence in the whole of the testimony which shows any trade in 1761 with the Barima or Waini or in any of these territories. If there is, I ask where is it.

Chief Justice Fuller. — What was the condition of the garrison of the fort?

Mr Mallet-Prevost. — I shall deal with that by and by your Honour.

Lord Russell. — “ By and by is easily said. ”

Mr Justice Brewer. — Perhaps you will turn to the first part of the Report you have just been reading from, page 198 :

“ This is the case with the order I gave last year to allow no more Spaniards to come up the river, for this measure really appears to me to be injurious to our interests. ”

Mr Mallet-Prevost. — I was going to refer to that in connection

with the turn of the tide and the coming of the Spanish to Essequibo, but I want first to finish with this Dutch trade.

Lord Russell. — That is rather interesting certainly.

“ I have always imagined that it was best for our inhabitants to send few or no boats to Orinoco and so compel the Spaniards to come here with their merchandize ”.

Mr Mallet-Prevost. — That is what happened. From this time on the place of the trade was altered and the trade which had been carried on largely by the Dutch from Essequibo to Orinoco was thereafter carried on by the Spanish from Orinoco to Essequibo.

Chief Justice Fuller. — The trade running the other way?

Mr Mallet-Prevost. — Yes; but I suppose anyway it was Dutch trade whether we went to Essequibo or Essequibo came to us.

Lord Russell. — It would be immaterial anyway.

Mr Mallet-Prevost. — Yes; but the argument of the Attorney-General is: when they went to get their things in Orinoco it was Dutch trade; and now when we come to go to Essequibo it is still Dutch trade.

Lord Russell. — Trade is not like the handle of a jug, all on one side.

Mr Mallet-Prevost. — Now I want to call attention to a statement at page 76 of the 3rd volume of the Appendix to the British Case, between B and C. This is a statement of the trade which had theretofore been carried on.

“ The second class which pursues this trade consists of the entire body of the poor, and they carry it on in this manner; one or more bilanders come and cast anchor in the numerous creeks and harbours on this extended coast, and notice of the arrival is quickly spread in the country; whereupon they go out in small boat in which they convey, for account of a large number of participators, some hides, tallow, dried meat, fish, and a small quantity of coin. These articles are taken by the Dutch, who keep open shop on the upper deck of their vessel, and give them in exchange what they require for themselves and for the commissions they bring: ”

This particular article is an article written from Cumana and speaking of the Dutch trade along the coast beyond the Gulf of Paria; but he makes reference to the trade to Santo Thomé, showing it is the trade there, showing that it is a trade that was carried on directly with the Spaniards :

“ These articles are taken by the Dutch, who keep open shop on the upper deck of their vessel, and give them in exchange what they require for themselves and for the commissions they bring; with this they return to their houses, land-

ing where they consider themselves most secure, and the landing is rendered easy by the extent and calmness of the coasts, and the openness of the villages, unless, indeed, there is some one to conceal their illicit entry, for it is a general practice, and the same thing is done in the Province of Guayana by the vessels which enter through the mouths of the Orinoco, the chief parties interested being the Dutch of Essequibo and the other Colonies of the coast — ”

showing that there was nothing exclusive there with the Dutch :

“ This kind of trade is most difficult to avoid, and it is even necessary to tolerate it somewhat, for, unless that be done, in the short space of eight months the Spanish villages would become as devoid of clothing as are the Indian villages, seeing that the common dress of all the poor people is a smock and wide breeches, like those of sailors, of very common holland. Anyone who has two changes considers himself well supplied — ”

we know in those tropical countries the poor people are very scantily clad and very roughly —

“ and they are of such wretched material that they soon split. Likewise the fields would cease to be cultivated for want of implements, of which a considerable number are worn out, owing to their extremely bad quality.

Neither the King nor the country are affected by the loss of the surplus hides and tallow — ”

I want to call attention to the way this was viewed. It was a side matter that was tolerated by the Spaniards, to let these poor people get rid of their surplus hides and tallow —

“ Neither the King nor the country are affected by the loss of the surplus hides and tallow, or of those of bad quality which the said Dutch purchase for more or less, as the case may be.

For the aforesaid reasons and many others, which are omitted in order not to make this note too long, it has been the practice of this Government to tolerate the fact of the poor people obtaining the clothing they need, and which they have no other means of getting in this country. ”

That is the way the Spaniards viewed this trade. They did not regard it as a matter to which the Dutch has a right. They regarded it as a matter which they tolerated.

Now I turn back for a moment to the 2nd volume of the Appendix to the British Case at page 56 which takes us back to the year 1748, because

it shows the beginning of the policy which finally led, as I say, to the change of the tide and to the trade going from the Orinoco to the Essequibo; rather than from the Essequibo to the Orinoco; at page 56, just above B. This is a letter from the West India Company to the Commandeur at Essequibo, and I read only one paragraph of it :

“ It gave us especial pleasure to learn through a subsequent letter from you, dated the 9th September, how by the zeal you have shown the trade of the Spaniards in the river of Essequibo begins to develop more and more, and we hope that all further means will be put in operation to make it flourish there to perfection. ”

Let me point out what occurs to me at this moment; that if anything is to be inferred from the Dutch trade going from the Essequibo to the Orinoco and anything to be inferred from the fact that that trade may have gone through the Waini and Barima, precisely the same inferences are to be drawn when we find the trade comes in the other direction, and the Spaniards come from Orinoco to Essequibo. They went through the Barima and Waini and these rivers to trade; that was their destination, and they are quite as likely to have picked up anything, on the way, as the Dutch were during the earlier part of the century.

Let me incidentally point out this fact. If there had been any value in the supposed trade to the Waini and Barima, where the Dutch picked up incidentally, did they give that up entirely? Why did they ask the Spaniards to come if the Dutch had any trade on the Barima and Waini. The Spaniards would not bring them that. The moment the trade left Dutch hands and went into Spanish hands the Dutch lost whatever trade they may have had with the natives in the Barima and Waini.

Lord Russell. — I do not see that they lost it. In one case the Dutch brought their commodities to Santo Thome and there bartered or exchanged them with the commodities which Spain or the Indians had; on the other hand, Spain brings the commodities which it has to sell, to Essequibo.

Mr Mallet-Prevost. — And if that is all the trade, my Lord, neither party lost anything and it was simply a question of who should be the carrier. But it is suggested here that when the Dutch went to trade in Orinoco they picked up trade along the road, and I say if there is anything in this, they lost this trade. They would not have given that up and the fact that they were willing to change the policy or thought it to their interest to do so and were satisfied with the trade with the Spaniards and no one else shows they had no other trade that they were letting go.

General Tracy. — Is there any record of trade with Barima afterwards?

Mr Mallet-Prevost. — I have stated over and over again that there is nothing and I shall show that presently. At page 198 of the 2nd volume of the Appendix to the British Case below D. This is many years later,

this is in 1761, and is one of the passages to which Mr Justice Brewer called my attention. I read from the beginning of the document under D.

“ I am thus frequently coerced into taking a course which I really believe to be disadvantageous, and into which I am forced because I do not want to have seven-eighths of the Colony against me.

This is the case with the order I gave last year to allow no more Spaniards to come up the river, for this measure really appears to me to be injurious to our interests.

I have always imagined that it was best for our inhabitants to send few or no boats to Orinoco, and so compel the Spaniards to come here with their merchandize; ”

showing the whole trade with the Orinoco was a trade with the Spaniards :

“ in this way our people would not be exposed to the least danger, and the arrangement began to work very well. But the jealousy of those who had been accustomed to have that trade in their own hands caused many remarks to be made concerning the permission given the Spaniards, and brought me many remonstrances. Seeing that I took no notice of all this, and merely answered that the trade was free, and that it was only right that all the colonists should be able to profit by it, they brought things to such a pass that, just before the arrival of R. Roberts, a Petition was laid before the Court in the name of the colonists, asking, amongst other things, that the permission should be withdrawn from the Spaniards, and that they should be forbidden to come here.

“ Finally, on the receipt of a despatch from Mr Spoors in Demerary, which I have the honour to inclose, I was obliged to bring myself to issue the desired orders, which still hold good. From that despatch your Lordships will see how Mr Spoors is also deceived. The report of the negro (who was, no doubt, put up to this) contains a most evident falsehood. The Spaniards whom he accuses, and who had come here with a large quantity of tobacco, could not have got so far on their return journey, and it has also been ascertained that they were in reality still at the Honourable Company's Post at Maroco when the event occurred. ”

And at page 202, at the bottom of the page, we have this statement :

“ Furthermore, there have occurred to us various considerations — ”

this is from the West India Company itself —

“ concerning the trade which is carried on from the Colony to Rio Orinoco. We beg you to consider whether it might not be possible, and more profitable for the Company, to direct this trade into such channels that it must be carried on from Orinoco to Essequibo, by the Spaniards; whereas it now, on the contrary, takes place from Essequibo to the Orinoco. On this point we shall await a detailed answer from you. ”

That answer is to be found at page 243, line B. This is from the Court of Policy :

“ We have given careful attention to the matters which your Lordships were good enough to submit to our consideration concerning the trade which is carried on between this Colony and the River Orinoco, asking us whether it would not be possible and more advantageous to the Honourable Company if such trade were so managed that the business would have to be contracted for by the Spaniards from Orinoco in this territory instead of our people going to Orinoco, as is now the case. In reply to this we take the liberty of respectfully answering that that trade is not nearly so profitable as appears to have been made out to your Lordships. It really consist of mere bagatelles, and is considered so risky and precarious that not more than two of our settlers (Persik and Struys) carry on trade with that Spanish river. ”

Now let me call the attention of the Tribunal to the following words :

“ Their boats are mostly manned by Spaniards, who are intrusted with the business both in cattle and tobacco. ”

So that even this Dutch trade, at least during these latter years from Essequibo to Orinoco was carried on by Spaniards in the employ of the Dutch :

“ We also consider it inexpedient to take up this business, which, by the way, is forbidden by the Crown of Spain, seeing that none of our settlers are accorded a pass to Orinoco (as your Lordships know), but are only allowed to have one to St. Eustatius. ”

I say there is no further record from this time on of any trade and no mention of it that I can find in the evidence until we come to the year 1794, thirty years later. From 1761 there was no reference, as I have stated over and over again, to any trade to the Orinoco or to the intermediate region along the coast. We have these clear indications from the extracts I have read. The trade was then turned over to Spanish hands and then we have the significant passage which I have read in another connection and shall read once more, or give thereference to it, in 1794, a statement by the Dutch Governor at that date in the 5th volume

of the Appendix to the British Case at page 147 from B to E. I will read only this significant passage :

“ A very noteworthy thing is that in the rainy season the Spanish lanchas come from Orinoco as far as Moruca by an inland way, passing from one creek into another, and they transport in this fashion their horned cattle and mules, and find on the way the necessary sustenance for the cattle, both grass and water. ”

I do not think that that passage needs any comment.

Mr President, I have gone through this period from the very first mention in the records of any trade in the year 1671, down to the year 1794, and I might say to the year 1814, for my statement refers to the whole period. I have shown that these records are full during certain years of a trade by the Dutch with the Spaniards of Orinoco. I have shown that that trade came to an end in the year 1760 or 1761, and I have pointed to certain significant passages which I think demonstrate that thereafter that trade was carried on by the Spaniards from Orinoco to Essequibo. Now I want to call the attention of the Tribunal to the few references that there are throughout this whole period to trade in the Barima, in the Waini, or in any of these intermediate rivers beyond the Moruca. Most of these have already been referred to and I shall only enumerate them. The Tribunal will recognize them.

The first relates to the year 1673. This is the only evidence that there is of any Dutch trade with the Barima and Waini and this region between the main streams of the Orinoco and the Moruca on the coast.

Hendrik Rol speaks of sending for trade to the Orinoco and states also that he was going to send a boat to Barima for carap-oil and the reference to that is in the second Appendix to the Venezuelan Case page 30.

The next reference to this region in connection with trade is just ten years later in 1683 and is connected with Beekman's proposition to establish a shelter there for the use of the Pomeroon postholder and to suggest that the Company might take that river. That was the better to enable him to compete with the French and the others who were his rivals in that quarter. There is no further mention, from 1683, of that region until the year 1700. In 1700 we have this reference in the first volume of the Appendix to the British Case at page 214.

“ And because our barque which we sent to Waini on the 11th November last, in order to salt fish and to trade for victuals, arrived here on the 29th December with a very bad catch, and without having done any trading. ”

That is the third evidence of trade, that is to say, that they did not do any; they went there to try to trade and failed.

The next reference is the petition of the Essequibo traders in 1717

when they asked permission to be allowed to trade and it was not granted; that is the fourth. Of course that petition related not merely to the trade in the Barima, where the French were taking advantage of it and the Dutch from Surinam and other places, but the petition related principally to the trade with the Spaniards themselves in the Orinoco; but in view of the fact that the Barima is mentioned and the Barima as well as the Pomeroon in that petition I do not want to pass it by. It is the fourth case where trade to this region is mentioned.

The fifth is the one in 1726 where the Dutch Company sent a man to Santo Thomé and told him if he was not allowed to trade there to go down to Aguirre. I mention that because Aguirre may be considered to be in this general region. It is outside the present extreme limit of Great Britain though that rose from time to time and I mention it for what it is worth.

The sixth instance of trade is the case of Jan Cauderas in 1735 who was allowed to go there and who ran away to Martinique and came back with some French and was arrested.

Then in the year 1741 there is a mention of horses being bartered for in Aguirre. That is again beyond the limits but I mention it because I want to be as liberal as I can in these references; there are so few.

Lord Russell. — How did they get from the Aguirre down to Esse-quiibo or Moruca?

Mr Mallet-Prevost. — By the same route my Lord. I have no doubt of it.

The reference to the Aguirre is in the second volume of the Appendix to the British Case at page 35 opposite A and it is a very brief extract :

“ The scarcity and lack of horses being taken into consideration it was resolved that the respective plantations should send to Aguirre in order to barter for horses and that the trading wares therefore be advanced out of the Company's stores. ”

Of course that was a trade with Spaniards but I mention it because as I say I want to take in every possible reference to this coast region even though it be somewhat beyond Great Britain's extreme claim.

The eighth reference to this region has to do with the year 1744 and 1746. I mentioned that incident in connection with the subject of settlement. It will be remembered that in 1744 some Caribs in Barima were induced to catch some runaway slaves and that the Indians in Barima then suggested that, a post be established with a postholder in Barima and they would become responsible for any runaways. Nothing was done under that, as I pointed out before, and there is a reference, which, though not directly as to trade, might be possibly so interpreted, and I therefore mention it in this list.

The ninth reference which there is to Barima is the year 1752 and it is in connection with a complaint of some Caribs of Barima against a Dutchman, of the name of Tonsel, against taking away children and friends

as pledges for debt. That is in the second volume of the Appendix to the British Case pages 72 and 73. I will read that as I have not before called the attention of the Tribunal to it.

“ Some Caribs from the Barima came and complained that one Christian Tonsel continually tyrannizes over them all, and that he took away their children and friends as pledges for debts.

Bastian Christiaansen also represents that the said Tonsel had taken away a boy slave whom he had bought for merchandize, and therefore belonged to him, and offers as proof the evidence of the Caribs present.

This having been all considered, the said Tonsel is sent for, and, after appearing, he is reprimanded and ordered to deliver to the Carib his children, and to Bastian Christiaansen the boy in question. The Caribs being at the same time sharply admonished not to detain or conceal any slaves belonging to Christians, under pain of being heavily punished therefor.”

That is one of two references that might be twisted into an exercise of jurisdiction over Indians in this region, covering this entire period. It is not trade, but it speaks of a Dutchman being in the Barima. I considered it as a possible instance of trade and I want to get rid of every possible instance of trade, whether it be clear or not. It will be remembered in reference to the incident of Van Rosen, the position taken by Gravesande in his reply to the Company was it did not matter where the Dutchmen were, he had a right to exercise jurisdiction over all Dutchmen in all cases and if this is put forward as an exercise of jurisdiction at Barima the answer is perfectly plain : it is exercise of jurisdiction over a Dutchman who had gone there and had behaved in such a way as to bring the enmity of Indians against the colony unless such treatment were avoided in future.

Lord Justice Collins. — I do not suppose an American officer of the law could arrest you in France, could he?

Mr Mallet-Prevost. — Not under French law nor American law. I do not think that has any application to a trader of this kind. There are some nations whose codes allow an exercise of personal jurisdiction over their own citizens in other lands, while some nations deny that. I do not know about England. I understand as to the United States that jurisdiction is not exercised over the persons of American citizens beyond American territory, but there are nations that do exercise that personal jurisdiction in foreign countries.

There is another reference to the year 1763 which although it does not relate directly to trade does relate to what might possibly have been trade with the Indians themselves and I shall refer to it; it is in the second volume of the Appendix to the British Case at page 226.

General Tracy. — Does not the Charter of the West India Company

provide itself, by its own terms, that the Company may control the action of its own citizens?

Mr Mallet-Prevost. — It does give that authority. It did give the right of jurisdiction over its servants and colonists and subjects in places beyond the Netherlands.

Lord Russell. — And power to introduce Courts of Justice and so forth, but the point is whether against another Power any such jurisdiction could be exercised in the territory of that other Power.

Mr Mallet-Prevost. — I should think that the controlling evidence on that point would be what Gravesande himself said because that would show what he had in his mind when he exercised it. I read the passage yesterday. I will read it again in this connection in the third volume of the Appendix to the British Case.

Lord Russell. — It is one of the best known passages I can assure you.

Mr Mallet-Prevost. — I read it only once, and it is only three lines. It is very pertinent. I think the Court certainly has the power to forbid —

Lord Russell. — Unquestionably; and if it finds him within the jurisdiction of its own Courts, power to punish him, certainly, subject to any question of venue; but the point is whether there is power to arrest a subject of their own in the territory of another.

Mr Mallet-Prevost. — Whatever might be the law on that point, if the persons making the arrest were moved to make that arrest not by reason of territorial grounds but because they believed they had jurisdiction over the person then we must interpret their action in the light of their belief, whether right or wrong, and therefore I show the Dutch view.

Lord Russell. — Although it does involve, you may say, a claim to exercise territorial jurisdiction, yet the person exercising it had not that in his mind.

Mr Mallet-Prevost. — And whatever authority might be exercised over a Dutchman in this way was not brought home to the knowledge of the Spanish Government. If an American officer came and arrested me here I do not suppose that could be taken against the French Government that this is American territory. It seems to me it is much the same here, if Tonsel a Dutch subject when he went back to Essequibo on complaint by anybody else was punished, how can that be taken as any evidence of jurisdiction in Barima? I do not care what the law is on the subject.

The President. — I remember last night you made reference to a report of Gravesande where he made reference to a rule that the jurisdiction *extra territorum suum jus dicenti enim impune non paretur* that jurisdiction can only take place in the territory of the State. Gravesande or the Company, I do not remember which, represented this in principle about the jurisdiction only in the State, not out of the State.

Mr Mallet-Prevost. — That was a statement of the Company, and Gravesande in answering said it was true, but he had a right to exercise jurisdiction over his colonists.

Lord Russell. — You say Spain did not know this, and it does not tell against her; and you say Gravesande purported to exercise it not as territorial jurisdiction, but personal and at Essequibo.

Mr Justice Brewer. — And it was exercised at Essequibo?

Mr Mallet-Prevost. — Yes; it was as in the transactions of Essequibo, and the suggestion of Lord Justice Collins to be true to the facts ought to be this: that for my misbehavior in Paris during the sitting of this Tribunal, when I get back to America I may be arrested and punished, but I do not suppose that can be taken as evidence of American jurisdiction in Paris.

Lord Russell. — I must say I do not think that is treating the point quite properly.

Mr Mallet-Prevost. — I beg your Lordship's pardon; I meant to.

Lord Russell. — The point is put seriously and ought to be answered seriously.

Mr Mallet-Prevost. — I meant to treat it seriously.

Lord Russell. — Yes; the point is a serious point and the answer to it is what I have given. Spain did not know it and therefore is not to be affected by it; and the next is Gravesande did not purport to be exercising any territorial jurisdiction and the arrest was at Essequibo.

Mr Mallet-Prevost. — I must apologize if your Lordship did not think I was treating the Tribunal with due respect.

Lord Russell. — Not at all; the point was put by my learned colleague and is entitled to due respect.

Mr Mallet-Prevost. — Now the period from 1758 to 1768 I shall dismiss in a word, because it covers the Dutch settlements in the Barima, the case of Van Rosen and the others. I was about to read from 226 a statement at the bottom of the page.

“ Beginning with Essequibo, I will first mention the Posts or so-called trading-places four in number, of the Honourable Company.

The first is Maroco, situated between this river and Orinoco, under the direction of which are the Rivers of Pomeroon and Weyni, full of Indians of the Carib, Arawak, and Warouw nations, whose help is always required, both by the Company and by private salters and traders, and who have also to be kept in a continual sort of subjection in order to prevent the escape of runaway slaves, and to facilitate their capture.

The road to the Spaniards leads past this Post, so that no one can go that road without the knowledge of the Postholder, who therefore, if he wishes, can generally get to know what is going on in Orinoco. This Post was of very great importance when trade was still carried on there for the Honourable Company; it then furnished oreane dye and boats, and since the cessation of the trade there is a great want of the latter.”

The passage points to a cessation of that trade at that time. There is a suggestion there that the Pomeroon and the Waini were not under the jurisdiction of Moruca. That suggestion of this extract I think will be more intelligently dealt with when I come to deal briefly at the end of my examination of the coast region with the claims of the Dutch. This was practically the territory Gravesande was claiming at this time, he was claiming the Dutch line went to just beyond the Waini, and the statement he makes is a reiteration of that claim, and I shall deal with that claim by and by, but as to the actual control of these Caribs or presence of Dutchmen among them for the purpose of trade I want to call attention to a passage in the fourth volume of the Appendix to the British Case at page 3 which gives a very vivid picture of the way Dutchmen went to these quarters.

“ The nation of the Caribs, my Lords, are looked upon as nobles among the Indians. It is a very good thing to have them as allies or friends — ”

and incidentally I call attention to what van 'sGravesande says here as to the kind of relations he had with these Indians. It has been claimed the Indians were subject to the Dutch, the Dutch ordered them about, and compelled them to do this, that and the other —

“ The nation of the Caribs, my Lords, are looked upon as nobles among the Indians. It is a very good thing to have them as allies or friends, for they render excellent services, but they are formidable enemies, capable of more bravery and resistance than one would think. When their principal or great Owls come to me, they immediately take a chair and sit down, and will eat and drink nothing but what I have myself, and they call me by no other name than that of “ mate ” or “ brother. ” A good way up the river there are several villages of that nation which white people have never seen. These are well populated, and the inhabitants get what they want through those of their nation who deal with us. We can rely upon them as friends in case of need. ”

Now comes the description of the experience of a Dutchman amongst them.

“ My brother-in-law, Van Bercheyck, who is not afraid of trifles, once visited a village of that kind up the Weyne, but he told me that he was never so much afraid in his life as when he saw 200 Caribs surrounding him armed with their bows and arrows, and although it was an extraordinarily profitable journey, and he had exchanged about 50 hammocks and two slaves, and had been invited by the Chief to return in the following year, he declared to me that he would not undertake it again for four times as much. ”

That was the experience of one Dutch trader of Waini among the Caribs, and in view of that statement I submit that the statement of van 'sGravesande that the Waini and Pomeroon as to matters of trade were under the Moruca is a statement that must be taken with a grain of salt. I have gone through every instance and every mention of trade in this region between the main mouth of the Orinoco and Moruca from 1673 on to 1769, almost a century. After that there is nothing. I have included as the Tribunal know a great many instance which are really beyond this territory, in Aguirre, and some that possibly may not relate directly to trade, but in all there are 13 instances. Now if we except the proposed shelter of Barima in 1683, of which of course nothing came, if we except the petition of the Essequibo traders in the year 1717, of which nothing came, if we except the bartering of horses in the Barima in 1741, if we except the proposed Barima post in 1744 which was never erected, if we except the complaint against Tonsel in the Barima in 1752, which has really nothing to do with trade, and the complaints of the Spanish Governor about the conduct of the Surinam rovers, and again except this general claim of van 'sGravesande to the Waini and Pomeroon as something under the Moruca Post, what do we have left?

It 1673 Rol sent for carap-oil to Barima; in 1700 a boat was sent to the Waini, and failed to trade; in 1735 Cauderas went to the Barima and went off to Martinique and came back and was punished; and then we have from 1758 to 1768 the expulsion of those slave traders and punishment of those; and that is all there is in the testimony of this case to bolster up this claim put forward by Great Britain to an exclusive trade in this region. When we come to answer the facts of settlement there is not a thing she can stand on; and when we come to examine the facts of trade and analyze them and see what is at the bottom of it, there is trading for carap-oil in one year, and a boat going to the mouth of the river in one year and did not do anything, and that is all. It is comical, I admit; and it is upon that Great Britain bases a claim to the control of trade.

I want to say a few words tomorrow on the subject of control of trade, and I have a few more passages which I can dispose of in 10 minutes in the morning showing that it was recognized by the Dutch to be in Spanish hands.

(Adjourned till to-morrow at 11 o'clock.)

TWENTY-SECOND DAY'S PROCEEDINGS AUGUST, 2 1899

The President. — Mr Mallet-Prevost, the Tribunal is ready to hear you.

Mr Mallet-Prevost. — In accordance with the suggestion which was made, I think by Mr Justice Brewer, Mr President, we have had prepared a *Table of distances* from various points, and the distances that appear thereon have been agreed to by the counsel for Great Britain and by ourselves in this sense : there are four columns, as the Tribunal will see ; the first two are measurements which are taken from map No. 1 in the Venezuelan atlas, which corresponds to the map at my right here ; the other two are measurements which have been taken from map No. 1 of the British atlas. The first of each of those columns is the distance in air-lines, and in the other along the travelled distance, meaning by travelled distance the general course along the windings of the streams, and so far as we can tell the districts over which travellers would naturally go. Of course there are differences between the distances as they appear in these various columns, and it will be for the Tribunal to determine which column is correct. But we are agreed as to the fact that these are the distances, which are shown by the maps themselves.

Sir Richard Webster. — It is necessary, Mr President, that I should make my meaning clear. There is a written note put upon this table by me, but Mr Mallet-Prevost preferred that I should state it orally. I do not mind that at all, although I would have preferred that it simply appeared upon the paper itself. First ; with regard to those travelled distances ; this table is entirely prepared by my learned friends, but I make no objection to it at all on that account, but it is entirely prepared by them. I do not know at all upon what system the travelled distances have been prepared or how they have been calculated. The only column that I have been able to check is the column of what my friend has called the air-line distance, which I understand to be the direct line, with reference to the British atlas, map No. 1. There is one other observation that I must make in consequence of what my learned friend, Mr Mallet-Prevost, has said. He has said that it will be for the Tribunal to decide which of these columns is correct. I respectfully enter my protest against that, for this reason —

Lord Russell. — The object of this table is to give approximate information. It will not be the function of the Tribunal, I should think, to determine, one way or the other, the accuracy of it. Probably neither is right.

Sir Richard Webster. — Yes ; and it is for that reason that I am

obliged to point out that the distances in the Venezuelan map are not taken from any map which is the result of actual survey, whereas these distances in the British map are without exception taken from particulars which are the result of actual surveys.

The President. — Yes.

Mr Mallet-Prevost. — I do not want to enter into a discussion with the Attorney General upon that point, but if I may be permitted to point out, the map which is No. 1 in the Venezuelan atlas is based upon a great many maps. It is a compilation, as I pointed out the other day, and it is based among others upon some of Schomburgk's maps and upon information which is given by English travellers in those districts, and therefore, if the British map which is alleged to be based at least in part upon Schomburgk's work may be said to be based upon any actual survey, certainly the same statement and with equal force may be made in favor of the map which has been presented by Venezuela. But, Mr President, as the Lord Chief Justice of England, has very properly pointed out, it is not the purpose of this table to give exact distances. We were asked by the Tribunal to give some table, so that some idea might be formed of the distance from one point to another, and that has been the purpose with which this table has been prepared.

Sir Richard Webster. — Yes.

The President. — The Tribunal will take notice of both the observations which have been made about this table of distances.

Mr Mallet-Prevost. — Before I leave the question of trade, Mr President, I desire to add a few words, and a few words only, pointing to a few significant extracts indicating in whose hands the control of this trade was. Of course, as I pointed out yesterday, there was no Dutch trade to this region subsequent to the year 1761, not even to the Orinoco; and prior to that period the instances of trade in the rivers between the Moruca on the coast and Barima point, or the main mouth of the Orinoco on the west or north-west are so few that it would manifestly be impossible to present any evidence of control over those particular acts. But there are some few passages to which I desire to call attention, as indicating in a general way what the control was and confirming many other passages which I read yesterday and which are entirely applicable in the same connection.

The first passage to which I call attention is in the first volume of the Appendix to the British Case, page 234, at the bottom of the page, opposite E :

“ Concerning the 600 to 700 stoops of balsam, of which I spoke in my former despatch that I would have in readiness with this same merchandize, I am obliged, to my vexation, to say that this past year not a single pound has been procured for the Noble Company, since they in Orinoco had all at once prohibited the traffic in it to the Hollanders, these changes having come to pass with the arrival of a new Governor at Trinidad,

who, with this object, has caused several manned vessels to cruise in the River Orinoco, so as to confiscate and bring in as good prizes all Dutch vessels who should wish to come thither; ”

balsam of course was one of the articles which was traded in with the Indians, and if as this would indicate there were Indians in the Orinoco, it shows that it was a traffic which was under the control of Spain herself. Then :

“ that has forced me to put a stop to the journey, since of necessity I dared not hazard and expose to danger on such a journey the Company’s cargoes, slaves, vessels, and other goods, which I hope Y. H. will take well; yet some, however, have undertaken to send thither with small vessels, although at very great risk! But at the present moment the traffic is again free, so that shortly I shall send thither, as before, a proper vessel, and I think that next year I shall have about 600 stoops ready for the Noble Company. ”

There is another passage in the same volume at page 237 relating to the next year, the year 1713. It is opposite letter C :

“ What has been said about the annatto might likewise be observed with respect to the balsam trade, that is to say, when that trade exists, but for a considerable time it has not been possible to carry it on, because of some dislike which the Spaniards (on whose territory the copaiba is purchased) have taken to our nation. They have also now been cruising after the Dutch boats which go thither, so that I have not dared to risk so greatly the Company’s wares and other effects, as I have fully reported to the Zeeland Chamber in my letters of the 31st July, 1712, and the 19th April, 1713. Consequently, there is as yet no stock of it on hand.

But as to the balsam oil, that, together with the purchase of red Indian slaves, was prohibited by me to the inhabitants of this Colony in pursuance of orders from the Zeeland Chamber so lately as the 24th July of last year, as can be more fully seen from the inclosed copy of my letter, upon which subject I wrote at much length to the Chamber at the time. It cannot, therefore, be denied that balsam was ere this sent from here to the mother-country, since this trade was permitted to the free, because it took place outside of the Company’s district, and was only carried on upon Spanish territory in the River Orinoco, where the inhabitants of the Colonies Berbice and Surinam likewise trade. ”

And that I might point out in passing is a very significant extract as showing the relations that existed between the Essequibo Dutch and the

Dutch of Surinam and Berbice on the subject of trade. I will cite another passage which I shall not read, but merely state that it is to be found in the second volume of the Appendix to the British Case at page 13. But I now pass on to the British Counter Case Appendix, at page 185. I see I have already read that extract, so I will merely give the citation there. It is on pages 185 and 186. Then in the second volume of the Appendix to the British Case there is another extract relating to the year 1746. It is at page 47, and I read from near the top of that page :

“ In the month of October last nine soldiers deserted from the Berbice River to Orinoco, and came to the plantation of Mr Persik here, to get bread, but made no show of violence. I was not advised of this until three days later, otherwise I should have prevented them from going any farther. On their arrival in Orinoco they joined a vessel from Trinidad which was cruising about there to prevent trade, and captured three canoes from this Colony that were out fishing, one of which, belonging to your Lordships, was in charge of salter H. Cleyman, with twenty-four hogsheads of salt fish; ”

and then lower down that page, just above letter E, there is this :

“ The new Governor being due in Orinoco in February next, I shall send there to claim the boats and cargoes, but I am certain that such will be in vain, having profited by the example of the Postholder, Jurge Gobel, whom they had promised me by letter to deliver up, but nothing came of it, the man now living in the Spanish village in Orinoco. ”

And there is also another passage which I have already read but which I merely now give the reference to, in the third volume of the Appendix to the British Case at page 76, opposite D, E, and F. There is still another passage in that third volume of the Appendix to the British Case which I shall read briefly, at page 35, between D and E : —

“ There are no foreigners navigating the Orinoco, that is, above Guyana — ”

of course meaning Santo Thomé —

“ There are no foreigners navigating the Orinoco, that is, above Guayana, for at its mouth and up to the neighbourhood of the said fortress they do so freely, but without being able to land in the said provinces, nor do any more trade than the fortress allows, and within the terms explained in my Note 13 of my Book of Notes, and without the toleration therein stated, which is absolutely necessary, they can do nothing. ”

Mr Justice Brewer. — Where is that from?

Lord Russell. — That is in the year 1763.

Mr Mallet-Prevost. — Yes; in the year 1763, and is from a statement of Diguja. In closing this I want once more to state that this trade such as it was, was tolerated by the Spaniards during the early years of the 18th century, but that the Spaniards adopted a different course about the year 1760 when the Flores Expedition, the first of many, went out to drive the Dutch slave traders from that region, and from that time on there was continuous control of that and prohibition of that trade by the Spaniards, as I shall show when I come in a moment or two to deal with the Spanish control in this region.

Lord Russell. — What do you understand to be the character of that prohibition? Was it simply part of the general policy of the “closed door”, by Spaniards shutting out strangers altogether from their ports, or was it confined to particular commodities, or to particular persons?

Mr Mallet-Prevost. — Your Lordship refers to the control that I have been speaking of at the latter part of that century?

Lord Russell. — Yes.

Mr Mallet-Prevost. — I think that exclusion of the Dutch from those lower rivers came about as the outgrowth and development of a general policy on the part of the Spaniards to stop the slave trade. During the early part of the century and indeed during the 17th century, the capture of Indians at all, in the interior, in every direction indeed, by these Caribs and the selling of them as slaves not only to the Dutch but to the others, was a great evil. It was an evil which was attempted to be put a stop to by the Spaniards, and it was a long war which they waged in that direction. First, it was in the interior, and for that purpose as is explained in Spanish documents, they established here and there missions for the purpose of gathering and of protecting the Indians from these attacks, and the Caribs were driven first from one point and then from another point. The region to the north and to the west of the Orinoco having been finally, if not cleared, nearly so, by about the middle of the 18th century, or shortly thereafter, the attention of the Spaniards was then turned to the region lying to the south and to the east of the Orinoco, and a war of the same kind was waged. It was a war against the Caribs and against the slave traders. It was that policy which led to the attack upon the Dutch post in the Cuyuni in the year 1758, and it was the prosecution of that policy which drove finally the Caribs out of the Massaruni-Cuyuni basin, as I shall show later on, and it was of course that policy which made itself felt along the coast, and which resulted of course in the driving out of the Dutch slave traders. It was a war, therefore, which was waged primarily against the Caribs and that resulted in either settling the Indians in Spanish mission villages, which they did in large numbers, or else driving them out completely from that region. Of course, the result of all that, a purpose which went along with it hand in hand, was the exclusion of foreigners who were engaged in that slave trade and other illicit traffic as I pointed out before.

Lord Russell. — That is just what I wanted to ask you about. What do you mean by other illicit traffic?

Mr Mallet-Prevost. — Traffic of any kind, my Lord.

Lord Russell. — The closed door against the foreigners ?

Mr Mallet-Prevost. — Completely.

Lord Russell. — I do not find any very marked trace in these early prohibitions, as you call them, of anything to do with the question of slavery at all. I am speaking of the years 1746 and 1763; nor do I see how seeking an exchange of commodities at Santo Thomé or buying and selling commodities at Santo Thomé had anything to do with the question of the slave trade.

Mr Mallet-Prevost. — My Lord, with regard to that question of the whole slave trade and the relations between the Dutch and the Caribs for slave trade purposes, I propose briefly, when I deal with the interior, and can therefore deal with the whole question of the Indians, to take that up, and what I have said now has been in anticipation of what I shall lay more fully before the Tribunal at that time.

Lord Russell. — Very well; thank you.

Mr Mallet-Prevost. — There are two other subjects which I shall treat very briefly in connection with this coast region. It has been alleged on behalf of Great Britain that she exercised political control, and as instances of the exercise of that political control, trade has been referred to. I have disposed of that. In the second place, timber cutting has been referred to, and in the third place the question of the fishery has been referred to. There is very little under the heading of timber cutting and under fishery, but what there is of it I want to dispose of now in a very few words. This is the claim which is set forth in regard to timber cutting. It is on page 163 of the British Case but it is not necessary for the Tribunal to turn to it :

“ Timber cutting has been licensed on the Pomeroon, the Moruka, the Waini, and the Barima by the Dutch and British Governments, and by them only. ”

Now the only evidence that we have of any timber cutting in Barima is this. There is one instance of it, and that is in the year 1766 and has reference to the Van Rosen incident, where those scoundrels went in there, and they were undoubtedly cutting timber round the houses that they occupied on the Aruca, and the reference which is made in the British Counter Case Appendix is to that year. It is at page 209 of the British Counter Case Appendix opposite F, and on page 210 opposite C I am simply reading this very briefly.

“ It was further resolved at this meeting that the following proclamations should be made : ”

and then,

And lastly, all dwelling or sojourn in Barima is forbidden to

all colonists, all upon penalty of being further punished according to the exigencies of the case, but those who still have some timber cut there are permitted to fetch away the same. ”

That is the only reference that there is in the evidence in this case that there was any timber cutting in the Barima. There had been some timber cutting there by those scoundrels and such as was cut they were allowed to carry away. That disposes of the Barima.

Lord Russell. — I have some recollection that there was a license to cut timber in the Barima.

Mr Mallet-Prevost. — Not in the Barima, my Lord. There were some licenses applied for, for the Waini. That is the only reference in all the testimony as to any timber cutting in the Barima.

Now as to the Waini; in the 7th volume of the Appendix to the British Case, there is a reference to that subject at page 195. This is in the year 1754, and there is the ordinary meeting held on the 6th of January, 1754; that is opposite letter B :

“ Jan Simondsen Swartz and Edward Ling, having, in company, requested to be allowed to make timber in the River Weijne, upon, according to their own voluntary offer, a payment of 2 1/2 per cent. to the Honourable Company, and the condition that every shipload shall likewise be obliged to be declared by them under oath, their request is accorded. ”

They were granted liberty at that time to cut timber in the Waini. And then a little lower down, there is this :

“ Mr Abraham van Doorn, Councillor of Justice of this Colony, having, at his request, been admitted, has, in the name of certain settlers, sought to know whether the River Bouweron had been thrown open, and being hereon answered with “ No, ” has further, in the name of the aforesaid, sought that to the said settlers like freedom and permission should be granted as to Edward Ling and Company, to the end that they, too, may be allowed to square and make timber in the river. Which request being considered, is also found to conflict with the consent accorded by this gathering on the 6th January of this year, at their request to Jan Simondson Swartz, and Edward Ling, granting freedom to make timber in the River Weijne indeed, but in nowise in Bouweron, and it is therefore found good to absolutely refuse the above-said request, and Mr van Doorn, for his clients, to be allowed to make timber in the River Weijne, under this condition, however, that such settlers here beforehand shall be required to declare the places where they choose to make the timber, and under the payment of the recognition appointed by our above-named resolution. ”

That is the only evidence in the whole case showing any authorized timber-cutting in the Waini, authorized by the Dutch, and of course it cannot be pretended that Spain had any knowledge of any such timber-cutting.

Mr Justice Brewer. — Do I understand you to say that these are the only references to timber-cutting in Waini?

Mr Mallet-Prevost. — The only references that show that any permits were granted. Towards the end of the century there were several requests, but none of them were granted. This in 1754 is the only one. It is not pretended that Spain had any knowledge of that and the requests which were made and refused towards the latter part of the century, not only did Spain have no knowledge of, but nothing was done under them. That is all that there is on the subject of timber-cutting.

Now a word as to what there is on the subject of fishery. In that connection these claims have been made by the British Case. At page 52 of the British Case it is stated :

“ The Dutch had for many years enjoyed the Maracot fishery in the mouth of the Orinoco. ”

And at page 96 of the British Case this further statement is made :

“ Large numbers of Indians were also habitually employed by the Dutch in well-established fisheries along the whole coast from the Essequibo to the Orinoco, and even beyond, but more especially in the mouths of the Waini, Barima, and Amakuru Rivers, and up the right bank of the Orinoco as far as the Aguirre. ”

Those are certainly very broad claims.

Now I make this statement and I shall make it good by reference to the evidence. In Aguirre there was never any fishing whatever by the Dutch. In the Amacura there was possibly one instance in the year 1681; and I say possibly because the evidence makes it a little uncertain whether the Amacura or the Orinoco is meant; in some documents the mouth of the Amacura is spoken of and in others the Orinoco. In Barima there was never any fishing. At the mouth of the Orinoco itself there was fishing at various dates between 1681 and 1760 and it was then put a stop to by Spain. In the Waini there are instances in the years 1699, 1700, 1762, 1768 and 1785 and that is all. I say there it was never any in the Aguirre and I cannot point to evidence of a negative fact; there is no affirmative evidence of it, there is a statement in the British Case that there was.

As to the Moruca the only evidence on that point relates to the year 1681 and an extract, to which I shall call attention, is in the 1st volume of the Appendix to the British Case at page 184, at the bottom of the page, F.

“ Moreover, it would not be amiss to send the fishing-

smack in the approaching dry season to the mouth of Orinoco, to salt manatees and turtles for the sustenance of your garrison here; the smack has been overhauled, and is capable of navigating these waters for two or three years. We know as yet, thank God, of no war, nor even of rumours thereof, and now live on satisfactory terms with the natives of this country, being inclined to bring annually a still greater quantity of annatto to market. On account of the constant rain I have obtained little food from them, and this want has been supplied by the sea-side, and again two canoes have gone there, one of them to Amacura to salt manatees and wild hog's flesh."

It seems to me that the use of the word Orinoco at the bottom of page 184 and the use of the word Amacura at the top of page 185 is probably used as referring to the same place. That is the only reference that there is to any fishing in Amacura.

Now as to the Barima. I said there was no fishing there and the only evidence that mentions the subject of fishing in connection with the Barima is that to which I shall now point, in volume III of the Appendix to the British Case at page 144, C :

I have received a Report from the Postholder of Maroco that on account of the bad treatment received at the hands of the present Governor of Orinoco, all the Warrouws, thousands of whom live on the islands in the mouth of Orinoco, are fleeing from there, and that hundreds of them have already arrived in Barima. Our fishery is therefore knocked on the head for some time, unless that nation should resolve to exchange blow for blow; they are numerous enough to do so, but courage fails them, for of all the nations known to us it is the one which is most afraid of fire-arms."

That clearly points to the fact that whatever fishery was carried on, in what my learned friends deem the Orinoco delta, that is to say, that part of the delta which lies to the north of the main stream of the Orinoco.

In the 4th volume of the Appendix to the British Case at page 2, there is this reference, opposite D :

" The loss of the fishery is most injurious to the Colony; it was hoped that it might alter with the change of Governor, but the present one has totally ruined it by driving the Warouws out of the islands into the mouth of the Orinocque, and a great number of them have taken refuge in Barima."

The only other reference to the Barima is to be found in the 3rd volume of the Venezuelan Counter Case, page 333, about the middle of the page :

“ And a short time after that some Guaruanos Indians appeared in two curiaras and we made them come on board, and they told me that they were Indians from Sacupana fleeing from the Carib Indians, and that on Barima creek and Amacuro there were about 3,000 Indians fleeing from the severity of the Orinoco. ”

In translating the Spanish it was somewhat doubtful what that meant, and we put it in as we believed it to be, and as I believe it to be now — that the severity of the Orinoco had reference to the very well-known fact that at times the Orinoco rises very high and very suddenly, overflowing the whole country. While it seems to me clear that that is the correct translation we put in the word floods in brackets with a question mark. I refer to this. It is not important but has been made the subject of facetious remarks by the Attorney-General and for that reason I mention it now.

“ And being asked by the Indian interpreter of the same nation, named Afortunado, as to whether there were any vessels of any nation on the river Barima or any negroes living with Indians in the woods, he replied that there were none, and that only in Waini did any schooners enter from Demerara and Essequibo for fishing purposes and to cut timite to cover and build their dwellings. ”

Then :

“ At five o'clock in the morning we crossed to the mouth of the Waini, and after visiting every part of it nothing was found but the places where the Dutch were fishing and salting fish (and this agreed with the information given by the Indians), and that the last day of the month there were two schooners loading “ timite ” and one fishing, and that they had gone; and I asked Silvestre Rodriguez whether he might know of any other place where we might fulfill the commission entrusted to us, and he answered that he did not, for the chieftains of Amacuro had said that there were no negroes there, neither Caribs; that those that were in this capital were ordered to be taken away, and since then there had been none. ”

That is the testimony of the expedition which was sent out by Spain and to which I shall presently refer in the year 1785 and that completes all that there is in the case with regard to — I do not say any fishing in Barima, for there was none — but the mention of Barima in connection with the subject of fishing.

As to fishing in Orinoco, there was fishing at various times.

In 1681, I have a reference to one in the 1st volume of the British Case at page 84.

One in 1735; in the 2nd volume of the Appendix to the British Case, page 21 B :

Another in 1745; in the 7th volume of the Appendix to the British Case at page 179.

Another in the year 1746; in the 2nd volume of the Appendix to the British Case at page 47.

Another in the 2nd volume of the Appendix to the British Case at page 48.

The other citations I only gave because I have not read them and the few I have not read to the Tribunal which I shall read. I think it is entirely unnecessary to trouble the Tribunal to turn to this of 1747 :

“ I have, in my previous letter by the ship “ Vrindschap ” (copy of which herewith), had the honour circumstantially to inform your Honours of the outrages perpetrated through the taking away of the fishing canoes (the consequences whereof we already feel, not one salter daring to take that way again, whereby English cod have already risen between 3 and 4 stuyvers per lb.) ”

Another extract has been read relating to the year 1760, found in the 2nd volume of the Appendix to the British Case at page 192.

Still another relating to the same year in the 2nd volume of the Appendix to the British Case at pages 195 and 196, and then we come to the very last mention of fishing in the Orinoco in the year 1760 in the 2nd volume of the Appendix to the British Case at page 197 B :

“ I have been obliged to send a detachment of four of the best soldiers to the Post of Maroco as quickly as possible because the Spaniards are beginning to put their horns out again. Besides a fine boat belonging to Mr Persik, and used only for trade (to which, therefore, no blame attaches), they have also taken five canoes belonging to this Colony which were engaged in salting — ”

pointing very clearly to, what I shall show in a moment, that the Spaniards were in control in this region and that when fishing was carried on it was simply because it was permitted by Spain.

There is this reference to the year 1763 in the 2nd volume of the Appendix to the British Case at page 225 :

“ The uncertainty of how they would be treated by the Spanish is the reason why I have this year dared to send no boats belonging either to the Company or to myself out salting to the coast of Orinoco. ”

Now we have a reference to the year 1767, which shows that this fishing had come to an end and came to an end because the Dutch were not

allowed to continue it. I read from the 3rd volume of the Appendix to the British Case at page 143, opposite E :

“ Mr Spoors sent me word in writing that the Spanish deserters have arrived in Essequibo, and that there is a sergeant among them. They give the harsh treatment of the new Governor as a reason for deserting. I immediately answered him saying that I wished them to be sent out of the Colony at the first opportunity, for I do not know what there may be behind this; I do not trust the whole business, especially since commerce with Orinoco is entirely stopped, and even the fishery is absolutely at a standstill, which has never happened before, and which is exceedingly embarrassing to your Lordships' plantations and to the whole Colony. ”

Showing the fishery was not a thing that would be willingly given up by the Dutch. It was a very important thing for them and if they gave it up it was because they were compelled to give it up and not because they acquiesced in what was done. It is very clear that whatever fishing was done there was not done as of right and not connected with any territorial claim of right.

Another extract in line with what I have just read is page 144 of the 3rd volume of the Appendix to the British Case and then passing to the year 1768 there is a statement at page 175 of the 3rd volume of the Appendix to the British Case, opposite F :

“ The principal fishery, my Lords, has always been in the mouth and between the islands of Orinoco, near the Warouws, to which we send salting markott twice every year. This has never been prevented until recently, to the inexpressible injury of the Company's plantations and Colony. ”

Of course, there is no question here that the Orinoco was Spanish and recognized to be so from the very earliest times. It has never been disputed and, therefore, any fishery that was carried on as it is stated that this fishery was carried on in the islands at the mouth of the Orinoco, clearly can have no relation whatever to territorial questions. It was a privilege which was allowed to the Dutch by the Spaniards. It was a privilege which the Dutch enjoyed as a matter of right, and when Spain saw fit to put a stop to it, she did put a stop to it.

Now at page 181 of this same volume, opposite E; this relates also to the year 1768 :

“ A report which I received after the closing of my letters compels me to add these few lines. A Spanish privateer from Orinoco, cruising along our coast, made an attempt to capture your Lordships' salter before the River Waini (indisputably the Company's territory) and fired very strongly upon him. The latter was cautious enough (not being able to escape otherwise)

to run his boat high and dry upon the bank so that he could not be reached by the privateer who, having continued to fire upon him for some time, and seeing that he could do nothing, finally departed.

They are not content with most unreasonably keeping our runaway slaves and with hindering us from carrying on the fishery in Orinoco, which we have always been free to do, but they now wish to prevent us from salting along our own coasts, and will in this manner end by closing our river, and no boats will dare to go out any more. Is this proper behaviour on the part of our neighbours and allies?"

This is written by the Governor of the colony that is supposed to have controlled this coast, Mr President.

The President. — Have you looked at page 144 of the 3rd volume? It is about C: "I have received a report," and so on. How do you explain this passage from the Director-General of Essequibo. He is speaking more of the Indians it seems to me.

Mr Mallet-Prevost. — I will read the passage. It is one that I gave the reference to, which I read to the Tribunal. I read it in another connection, not in connection with fishery. Now I shall be glad to read it in answer to any question Your Excellency desires to ask. It is only not to repeat it; I gave the reference:

"I have received a Report from the Postholder of Maroco that on account of the bad treatment received at the hands of the present Governor of Orinoque, all the Warouws, thousands of whom live on the islands in the mouth of the Orinoco, are fleeing from there, and that hundreds of them have already arrived in Barima. Our fishery is therefore knocked on the head for some time, unless that nation should resolve to exchange blow for blow; they are numerous enough to do so, but courage fails them, for of all the nations known to us it is the one which is most afraid of fire-arms."

It is in line with what I have been saying that the fishery was a fishery that was entirely in the control of Spain. Spain stopped it. These Warows who had been fishing along the islands forming the northern delta of the Orinoco went to Barima and the Dutch Governor now writes home to his company complaining of this stoppage of their fishery.

The President. — By the Warows or by the Spaniards?

Mr Mallet-Prevost. — The Governor of Orinoco had driven the Warows out of the mouth of the Orinoco.

The President. — Do you think the Indians did it and not the Spaniards.

Mr Mallet-Prevost. — It is possible, but it seems to me in this particular case it is hardly open to this:

“ On account of the bad treatment received at the hands of the present Governor of Orinoco all the Warouws, thousands of whom live on the islands in the mouth of Orinoco are fleeing from there and that hundreds of them have already arrived in Barima. Our fishery is therefore knocked on the head for some time ”.

I should think that was attributable to the action of the Orinoco Governor.

The President. — I think the Dutch, who were fishing, were perhaps not many and the Indians were very numerous so that it was a great obstruction to the fishery — the Indians not perhaps the Spaniards who were not everywhere. Do you not think so?

Mr Mallet-Prevost. — I do not know that I entirely understand your Excellency.

The President. — I would only say you say because the Spaniards did not allow fishing; but do you not think perhaps the Indians and not the Spaniards were an obstacle to the fishery?

Mr Mallet-Prevost. — It would be directly counter to the position taken here by Great Britain. She is claiming that she was carrying on these fisheries; and whatever trade and whatever else she was doing there was through these Indians; and if these Indians were themselves an obstacle, it is counter to the position that has been taken.

The point I have been calling attention to in the evidence I have been stating is this : that, whatever may have been the facts, the Dutch believed that they were being stopped by the Spaniards for they say so. They say the Spaniards have taken these boats, that they have taken the other boat, that they have done this, that, and the other, and the fishery is knocked on the head. In all the extracts there is not a suggestion coming from Dutch authority that these fisheries were being interfered with by the Indians. It may have been. It seems to me immaterial if it was or not. The Dutch believed they were being stopped by the Spaniards and they acquiesced in the stoppage. Why? Because they could do nothing else and though the Indians may have had something to do with it I think it is clear from the evidence the main responsibility of this was on the Spaniards themselves who were exercising authority there. Captures of fishing vessels were made, not by the Indians, but by Spaniards over and over again. You will remember in the expedition of 1760 that Flores went down and captured a fishing vessel which came from either Essequibo or Surinam, a Dutch fishing vessel and there were other instances where fishing vessels were captured by Spanish authority and not by Indians.

The President. — I only ask if it is possible in your opinion if the Indians independently of Spain could have stopped the fishing of Dutchmen.

Mr Mallet-Prevost. — If you ask my honest opinion I say no; if you

say, Such a thing would be possible I say yes ; I do not believe that such was the case, but I think it was quite possible. I believe the evidence in this case strongly shows from beginning to end whatever was done in the mouth of the Orinoco in the nature of fishing was a thing for a time prohibited by Spain and that when it was put a stop to the agent that put a stop to it was Spain or rather Spanish officials.

Mr Justice Brewer. — What difference does it make as to Dutch control who stopped the fisheries?

Mr Mallet-Prevost. — I have endeavored to point out it makes no difference, and I think I so stated that it was entirely immaterial for my purpose whether I answer affirmatively or negatively the question put to me by the President because the Dutch believed their fishery was being put a stop to by the Spaniards, and the fact it was put a stop to, there is no question about.

Chief Justice Fuller. — Did not you read from page 181?

Mr Justice Brewer. — You contend the Dutch did not have control but the Spaniards did?

Mr Mallet-Prevost. — Yes ; it is enough for me to show the Dutch did not, but I think I have demonstrated the Spaniards did.

Lord Russell. — Page 181 was your last reference?

Mr Mallet-Prevost. — Yes, I do not know if I read it or only referred to it, opposite E. I did read it and that shows it was only a Spanish privateer ; will your Excellency just see that passage :

“ A report which I received after the closing of my letters compels me to add these few lines. A Spanish privateer from Orinoco, cruising along our coast, made an attempt to capture your Lordship’s salter before the River Waini. ”

I read the balance of it. That shows it was the action of a privateer and a privateer was an authorized vessel of course sent out by Spanish authority.

Now there is another reference at page 193.

Lord Russell. — But does it follow that a privateer is necessarily one authorized?

Mr Mallet-Prevost. — I may have stated that too broadly ; I think possibly I did, my Lord. What I meant to say was that a privateer was a vessel that was armed with authority from the national Government.

Lord Russell. — But does that follow?

Mr Mallet-Prevost. — The authority may be for one purpose or another, but I think it follows a privateer must have authority of some kind.

Lord Russell. — Was war going on at this time, in 1768?

Mr Mallet-Prevost. — No ; I do not think it was ; but the use of the word, whether war was going on or not, would seem to imply in the mind of the person using it, that he used it with some notion of national

authority in the vessel, rather as descriptive of the vessel, than as a technical term.

Chief Justice Fuller. —

“ They are not content with most unreasonably keeping our runaway slaves and hindering us from carrying on the fishery in Orinoco..... they now wish to prevent us from salting on our own coasts. ”

Mr Mallet-Prevost. — Certainly, that refers to Spain and the Spaniards.

There is another at page 183 opposite E.

“ Also, instead of the salt cod, which, because of the stopping of the fishery in Orinoco and of the scant catch on the seaside, has now been brought from the English, might there not be sent from here to the Colony, a greater quantity of stockfish than we have sent heretofore? ”

Then.

“ In the meantime the loss to the Colony of the fishery in Orinoco causes us no slight regret, but we know no means of redress against this. ”

These are the words of the Governor that represented the Dutch authority there and the Governor supposed to be controlling this coast.

Mr Justice Brewer. — This is the language of the West India Company, not the Governor.

Mr Mallet-Prevost. — Yes; I was mistaken in attributing that statement to the Director-General; I saw his name in connection with it but it is the language of the Company itself.

Lord Russell. — At the top of page 182 it shows how this was regarded, this reference to the privateer; it is regarded as if it was quite an unlawful act :

“ Must we, my Lords, regard all this quietly and endure all these insults and hostile acts? Must we see our Posts raided and ruined and our boats attacked upon our own coasts? What is to be the end of this? There is no redress to be got from the Court of Spain. Why not exercise the *jus talionis*? ”

Mr Mallet-Prevost. — My Lord, when I come to speak of a number of these Spanish expeditions about whose authority there can be no question; who went out armed with authority, and whose acts were confirmed by Spanish authority, exactly the same language is used by the Dutch; and with regard, later on, to the acts of the Spaniards in the interior, when they expelled the Dutch from the post they had in the Cuyuni in the year 1758. Of course it is spoken of by my learned friend as a raid

and has been referred to as a raid from the bench because as yet the true facts have not been put before the Tribunal; but that was an expedition sent out under Spanish authority and was no raid.

Lord Russell. — Can you doubt this was regarded by the Dutch as being a raid and being an unjustifiable raid?

Mr Mallet-Prevost. — I should think it was simply a characterization of these acts.

Mr Justice Brewer. — What does this language mean?

“ Made an attempt to capture your Lordships’ salter before the river Waini (indisputably the Company’s territory) ”

Of course that makes it clear.

Mr Mallet-Prevost. — It makes this clear, my Lord, that at that time the Dutch were claiming that the Waini was their territory; but they did not pretend to say and did not say that Spain was admitting that claim.

Lord Russell. — If it was their territory and they were claiming it they must have regarded this as an unjust attack upon them and the language a little lower down makes it clear :

“ Is this proper behaviour on the part of our allies? ”

Mr Mallet-Prevost. — Then if they refer to the question of neighbours and allies they must have been referring to the Spaniards.

Lord Russell. — Of course they were.

Mr Mallet-Prevost. — Then this was a Spanish action, an action by Spanish authority.

Lord Russell. — Clearly Spanish, but whether it was by authority of Government, the Spanish that is another matter. I do not draw any distinction between the action of Spain for this purpose, but when you used the word the Spanish “ privateer ” I asked you if it necessarily meant it was a Spanish vessel.

Mr Mallet-Prevost. — I might point out this fact in connection with the suggestion.

Lord Russell. — The only suggestion I make is this : (this is all quite relevant in your argument) that these acts were regarded, apparently, by the Dutch, as an unauthorized raid, bad faith coming from a neighbour and an ally, coupled with the distinct assertion that it is in the territory of the Dutch.

Lord Justice Collins. — Do not they make these acts one of the grounds of their remonstrance?

Mr Mallet-Prevost. — Yes; I am going to refer to the remonstrance afterwards.

Lord Russell. — I thought your argument was these acts were acquiesced in and treated by the Dutch as if the Spaniards were within their territorial rights in doing what they were doing.

Chief Justice Fuller. — This language applies to the river Cuyuni?

Mr Mallet-Prevost. — Yes.

I have said, Mr President, and I repeat now what I shall show later when I come to discuss the remonstrance of 1769, that these acts were acquiesced in; they were protested against in that very remonstrance, but the answer which Spain gave to that remonstrance, if I may anticipate a remark in that connection, was to continue doing precisely the same thing and to exclude the Dutch from these fisheries so that they never thereafter enjoyed them. That was the answer the Dutch received and in that answer the Dutch acquiesced. But quite apart from that these facts have a significance and it is to that significance I was about to call attention in connection with the question put to me by the Lord Chief Justice of England. They show there was an absolute lack of Dutch control in that quarter. It has been alleged on behalf of Great Britain that this whole region from the mouth of the Amacura, I think they say to Surinam, but away beyond Essequibo, was continually under the control of the Dutch and apart from the question of fisheries. I call attention to this evidence and I ask if this evidence is consistent with such a claim to Dutch control. There are a number of instances of fishing in the Waini; one is the British Counter Case Appendix, page 62 where the yacht Rammekens went down the river for the purpose of salting provisions.

Again, in the same year, in the Appendix to the British Counter Case, pages 63 and 64 where the same yacht went to the mouth of the Waini for salting.

Again at page 65 of the Appendix to the British Counter Case the same yacht.

In the year 1700 a vessel or boat went to the mouth of the Waini to salt. The reference to that is the first volume of the Appendix to the British Case, page 214 A.

Now I want to call attention to some further extracts of later date showing the continued control of this matter by Spain, control in fact.

There is a passage in the fourth volume of the Appendix to the British Case page 11, D :

“ But, my Lords, allow me to ask what is now to be done to get food for your Lordships’ slaves? The salting is now entirely stopped, not alone in the mouth of the Orinocque, where we had carried on the fishery from time immemorial, but there are neither canoes nor corrials to be got for the plantations or the Fort along the whole of the sea-coast, and we are shut in on all sides. ”

That is evidence of the fact of stoppage and it is for that purpose I cite it.

Mr Justice Brewer. — What year is that?

Mr Mallet-Prevost. — 1769.

On page 12 of the same volume is another reference along the same line, opposite B :

“ The invasion of the Spaniards, as unexpected as it is con-

trary to the law of nations and the treaties of alliance, calls for your Lordships' most serious consideration, and requires a speedy resolution for redress. Not only is the Colony exposed to the greatest danger from Cuyuni up above, and from the sea-coast below, the plantations being continually open to pillage and plunder (amongst which plunderers the principal are your Lordships' runaway slaves, to whom all the paths, holes, and corners are known,) but our fisheries both in Orinocque and on the sea-coast have been entirely knocked on the head and lost — ”

of course that was different from Spanish action —

“ and your Lordships' post at Maroco has been entirely ruined, ”

and so on.

At page 31 is an extract from the remonstrance of 1769. I read opposite D :

“ That they, the remonstrants, considered it their duty to further bring to the knowledge of their High Mightinesses on this occasion that the people of the Orinoco had some time ago not only begun to dispute with the people of the Essequibo about the fishing rights in the mouth of the Orinoco, and thereupon to prevent them by force from enjoying the same, notwithstanding that the people of Essequibo had been for many years in peaceful and quiet possession of that fishery, which was of great value to them on account of the abundance of fish in it; but that, further, the people of Orinoco were beginning to prevent, by force, their fishing upon the territory of the State itself, extending from the River Marowyne to beyond the River Wayne, not far from the mouth of the Orinoco, as could be seen, ”

and so on. I shall deal with that definition of territorial extent by and by. I call attention to the fact now, that there was a protest at this time, against the stoppage of these fisheries by the Spaniards.

Now what was the practical result of that remonstrance? Will the Tribunal kindly turn to page 41 of this same volume.

“ The Spaniards continue to cruise along the coast, so that there is no chance of getting anything salted for the plantations, which does both the Honourable Company and the planters a great deal of harm. ”

And at the beginning of the last paragraph, F :

“ Meanwhile our fisheries are ruined and we have lost all our runaway slaves. ”

At page 72 is a reference to the year 1770 between C and D. “ The fishery in the mouths of the Orinoco was never less disputed. ” This is the report which was made by the Spanish commandant at Santo Thomé to the home government advising them as to what the facts were with regard to these fisheries. This is what he says :

“ The fishery in the mouths of the Orinoco was never less disputed by the Spaniards to the Dutch than at present, for the Dutch do not fish there, and in the three years that the privateers for this river have been in service by my orders, they have taken twenty-three foreign vessels. — ”

that shows what was being exercised by Spain at that time.

General Tracy. — And it shows that privateers were commissioned boats.

Mr Mallet-Prevost. — Of course; here is the statement by the Spanish Government to that effect; that the privateers, what that term might imply in times of peace — he was describing them as his authorized agents, of the Spanish Government, for that purpose :

“ and in the three years that the privateers for this river have been in service by my orders, they have taken twenty-three foreign vessels but no fishing-boat, nor have even seen any, nor has it come to my knowledge that the Dutch have had such fishery, as is shown by Document No. 1. ”

Pointing to the fact, Mr President, that that fishery as it was carried on was there probably carried on by the Indians themselves, and it may be a few Dutchmen, hardly recognized as Dutchmen among them. I shall point out when I come to deal with that question of slave trade how these Dutchmen went about disguised as Indians and if some Dutchmen were fishing with Indians it tallies with what the Spanish Government here says :

“ And I have only been able to find one case in which the Spaniards had met with and taken in the year 1760 a small Dutch schooner and two fishing boats in the mouth of the Orinoco and River Barima, for justification of which see Document No. 4.

But I am of opinion this pretended fishery should be denied to them and prohibited, for that would soon degenerate into illicit trade, difficult to root out, and very onerous to the Spanish provinces. ”

That is the position that Spain took when this matter was complained of.

Now I call attention to a document in the following year 1771 and it is in the second volume of the Appendix to the Venezuelan Case at page 217; this is a statement by the West India Company, made two years after the remonstrance had been presented to Spain.

“ We also hope that upon the arrival of a new Governor in Orinoco the fishery will be opened, and we greatly approve of your purpose of maintaining a good friendship with him. ”

Can there be clearer evidence, Mr President, of the fact that the Dutch recognized, as a matter of fact, if they fished, it was because they were allowed to fish by the Governor of Orinoco. They made their remonstrance in 1769; it had been utterly futile; and he says later the Company at home writes to the Governor in the Colony and expresses the hope the Spanish Governor will allow them to fish and yet today the control of the Orinoco is presented as a basis of Dutch title to this region.

This is not the last reference; there is still another reference in the fourth volume of the Appendix to the British Case at page 103 opposite E. This is a letter from the Dutch Governor to the West India Company :

“ It is related here that a new Governor has arrived in Orinoco. Should that be true, I hope that he will not be such a Turk as his predecessor. With the latter there was not the least chance of getting anything out of Orinoco, and he even forbade the usual salting in the mouth of the river, and set a strong watch to prevent it. If the present one shows a little more tractability, as the former ones did, I will soon take advantage of it; there must now be abundance of cattle there. The English no longer bring either horses or mules and very little provisions, the cause of this being the protested bills. ”

That is the last reference in the evidence to any Dutch fishing or Dutch salting. It was put a stop to by Spain and protested against; the protest availed nothing and the Dutch acquiesced in the exclusion from that region; yet in view of those facts this statement is made in the British Counter Case and I call the attention of the Tribunal to it. British Counter Case pages 87 and 88, last paragraph, page 87 :

“ On p. 138 of the Venezuelan Case reliance is placed on the ruin of the Dutch fishery in the mouth of the Orinoco at the hands of the Spaniards. This fishery had been enjoyed by the Dutch for a long period, and their right to it was never denied by the Spanish authorities till 1769. As has been shown in the British Case, all the captures of Dutch fishing craft before that year were either acts of piracy, disavowed by the Spanish Commander, who, in many cases, procured redress for the owners, or were justified only on the ground that, under pretence of fishing, contraband trade was being carried on with the Spanish possessions. There is nothing to show that the Dutch fishery was permanently abandoned after 1769. ”

Is there anything to show a single instance of Dutch fishing after 1769?

Lord Russell. — I think that the passages you did read relating to 1712 and earlier do show that whoever was the then Governor was, as I suppose you would say, winking at the presence of the fishery.

Mr Mallet-Prevost. — I think I stated that fishery was carried on.

Lord Russell. — And so carried on up to about 1746?

Mr Mallet-Prevost. — I think a little later my Lord. It was then put a stop to. Of course the claim here presented by the British Case and Counter Case is a claim that in some way these fisheries enjoyed by the Dutch for a season by the leave of the Spaniards gave them a territorial right to this fishery; that it was exercised as a right in 1769 and very triumphantly, in the rhetorical passages I have referred to, it is pointed out there is no evidence it did not continue. It is very difficult to prove a negative fact, Mr President, and very easy to prove a positive fact. If there is any evidence of the continuation of that fishery after 1769, where is it? It is not upon me to prove there is none. It is brought forward as a basis of right and basis of title. Now where is the evidence of it?

Now I have gone through all the facts upon which Great Britain alleges a title to this region on the coast excepting the question of Indian relations. I shall not deal with the question of Indian relations as applicable to the coast alone because it is impossible to deal with that question as applicable to any particular district.

General Harrison calls my attention to a passage which I had overlooked in connection with timber-cutting and which is important although the question of timber-cutting seems to me a very small feature here. At pages 650 and 651 of our printed argument is a quotation from the 2nd volume of the Appendix to the British Case, page 143, and I simply read that quotation :

“ Proceeding now to answer what you are pleased to ask with respect to cutting timber in the River Pomeroon, I have the honour to say that, in the aforesaid river..... this E. Ling has taken away from there two ship-loads of timber, after which he, having again left this Colony and having gone to Barbados, this concession was withdrawn, and it was resolved to grant none further ; but the making of timber in the River Waini was left free to those who should apply for it. Of this no use was made, neither could it be made, because of the shoals in the upper Waini. ”

The extract points to one of the reasons why, as a matter of fact, there never was any timber cutting in Waini. I was saying, Mr President, that I have gone through the evidence in this case for the purpose of showing the basis of title to this region and I propose now before I leave it to turn to the other side and show the Spanish control which was exercised over this same region. In that connection and with a view of the

facts which I have set forth, I want to read these claims which are made by the British Case upon the subject of political control and in view of the facts the Tribunal will be able to appreciate how sound these claims are. I read this from page 162 of the British Case.

Mr Mallet-Prevost. — You are now going to show Spanish control?

Mr Mallet-Prevost. — Yes; my Lord.

The President. — Of the whole region?

Mr Mallet-Prevost. — Of the coast region — only the coast region.

Lord Russell. — And what period?

Mr Mallet-Prevost. — The whole period, my Lord.

Lord Russell. — From?

Mr Mallet-Prevost. — From 1648 to 1814.

The President. — And later you will go to the interior?

Mr Mallet-Prevost. — Yes. Now British Case, page 162, line 33 :

“ 2. The facts are even stronger in favour of the Dutch and British title in respect of the whole coast region from the Essequibo to the Amakuru.

The Dutch and the British have occupied this coast since the seventeenth century. The inland waterways throughout the district have been continuously under their control. ”

I call attention to the fact that it specifies the whole region to the mouth of the Amacura. At page 163, there is this statement, the third line from the top :

“ The Dutch exercised jurisdiction in that district. ”

And at page 119, going back for a moment :

6. “ The Indians of Guiana submitted to, acknowledged, and supported the sovereignty of the Dutch and British respectively within the territory now in dispute, and there was a continuous exercise of jurisdiction therein by the Dutch and British. ”

It is to that continuous exercise of jurisdiction that I call attention. At page 78 of the British Case :

2. “ During the whole of the 17th and 18th centuries the Dutch had control of the coast from the Corentin to the Orinoco.

3. During the same period the Dutch had the control of all the rivers flowing into the Atlantic from the Corentin to the Amakuru. ”

Then :

5. “ At different times during the same period the Dutch

occupied various points in the interior on the Rivers Essequibo, Massaruni, Cuyuni, Moruka, Pomeroon, Waini, Barima, and Amakuru and their tributary streams. ”

Of course, I am dealing now only with the coast rivers.

In the Counter Case for Great Britain there are other claims along the same line; at page 78 —.

Lord Russell. — Is it necessary to read them?

Mr Mallet-Prevost. — I will give the references. They are along the same line. I think in view of the facts as we now see them one cannot help reading these claims without being struck with the discrepancies between the allegations and the facts :

“ The Dutch, during the whole of the period, without any opposition by the Spaniards, made use of Barima in any manner which they considered to be desirable. ”

I do not mention a great many but will the Tribunal think of what I have been saying on the question of fishery this morning, and compare it with the phrase “ treated the river as an integral portion of their colony. ”

And page 114 of the British Case :

“ The districts of Amakuru and Barima were occupied by Caribs and other Indians, who acknowledged the Protectorate and jurisdiction of the Dutch : the whole of this region was dealt with in all respects as an integral portion of the Colony of British Guiana. ”

There are other statements of the British Case as to the relation of one part of this territory to the other which are important in this connection. One, page 13 of the British Case, is as follows :

“ The Essequibo Government thenceforward — ”

referring to the year 1769 —

“ continued to control the district of the Pomeroon, and of the rivers and creeks connected with it, *including the Barima.* ”

I call attention to that description of those rivers. There is the Pomeroon and the rivers and creeks connected with it. The Tribunal will remember the evidence as to the barriers, and I ask if that is a fair way of stating the case. At pages 15 and 16 of the British Case :

“ By means of the Post at Moruka, the entry of traders into the Barima and Waini districts was controlled, and those guilty of outrages upon the Indians, or of slave trading contrary to the laws of the Company, even though not belonging to the Colony of Essequibo, were arrested and punished. ”

Now I shall take up, as briefly as I can, the history of control in this region; and, between the years 1648 and 1682. Two instances have been

cited on behalf of Great Britain to prove Dutch control; one of them, with which we are familiar, is the journey of the Commandeur of Pomer- roon through the Barima region to visit the Spanish Governor in Ori- noco; that is supposed to be some sort of control in Barima; the other is a case which is referred to in the 3rd volume of the Venezuelan Coun- ter Case, page 15.

When I make statements that these instances have been referred to by Great Britain I have the reference before me to the passages in the Attorney General's speech and if there is any question I would like to have my attention called to it and I will substantiate what I say. This is the 3rd vol- ume of the Venezuelan Counter Case, page 15. This is the case of Guaray who was with a Dutchman at the mouth of the Amacura. He was arrested and ordered to leave the Orinoco by the Spanish authorities, and I refer to that now because the Attorney General referred to this as an incident of Dutch jurisdiction exercised in Amacura.

Sir Richard Webster. — I do not think I did — interrupting you — I do not recognise my own argument as you state it.

Mr Mallet-Prevost. — I should be glad to cite a passage. It is page 199 of your argument.

Sir Richard Webster. — I do not go back from anything I said.

Mr Mallet-Prevost. — The revised page is 207 :

“ There was a certain trade, from one point of view contra- band, between the Colony and Orinoco. Now in the year 1680, if the Tribunal will turn to the Venezuelan Counter-Case Appendix pages 15 and 16, the third volume, they will find clear evidence the Dutch were exercising authority as far as Moruka, I mention this for the purpose of refuting by antici- pation the suggestion there were no operations of the Dutch further north than the Essequibo itself. I take it they will not seriously dispute either Moruka or the Pomer- roon, and it mat- ters not that this jurisdiction was over Arawak slaves or over Dutchmen, if you like. They were treating the Amakuru as territory where the men were not in freedom and they could capture them and bring them back. You will find at page 15 Guaray, an Aruacan, says he got, ”

then he quotes the passage I was going to read —

“ as many Aruacans as he could muster, to look for and punish them; that he got ready as many pirogues as he could and set out in quest of said Caribs, whom they met at the mouth of the Amacuro, and killed them and captured eight vessels. ”

Now I may misunderstand the Attorney General but I do think that the language which I have read is open to the interpretation and I think it is the fair interpretation to put upon it, that it was being done

there by this Aruac Indian was in some way evidence of an exercise of Dutch jurisdiction. If it does not mean that it is not pertinent.

I shall be obliged to the Attorney General, when I put anything in his mouth that he thinks not fair, if he would interrupt me :

“ The said deponent was not sworn because of his inability to take the oath. The interpreter being requested to ask him as to why he had come to the Orinoco in company with the Flemish, he stated that the Governor of Berbis had sent for him — ”

of course, as I have pointed out, that could have no relevance to this issue —

“ had sent for him to his dwelling and informed him that some Caribs had killed several Hollanders, and that he should come in company with Pitri Dirguian and Jan Endriguez, with as many Aruacans as he could muster, to look for and punish them; that he got ready as many pirogues as he could and set out in quest of said Caribs, whom they met at the mouth of the Amacuro, and killed them and captured eight vessels.”

Now that is the sort of evidence that has actually been cited and read to this Tribunal in support of an allegation of Dutch control in this region; that and an account of a visit of the Commandeur of Pomeroon to the Barima in 1680 or thereabouts, are the only two instances which can be cited as showing, (I do not like to call it) an attempt to exercise jurisdiction. It dignifies the acts in a way they do not merit but are the only references given as supporting the allegations of Dutch exercise of jurisdiction there.

Now from 1684 to 1714 the French were, as I have more than once pointed out, during a part of that time in possession of the Barima and Orinoco. During the first part, it was an occupation that was hostile to the Spaniards, during a portion of the war of the Spanish Succession. If they continued there, of course they were there as the allies of Spain, but whether they were there or not during that entire period the Dutch were excluded from there. The Dutch suffered attacks at the hands of the French and Caribs from Barima and I might say (if these allegations in the Case and Counter Case of Great Britain had not been made) there is no statement of any exercise of Dutch jurisdiction there during those years. Of course, there is no evidence of it at all. It is significant in connection with the first taking of that region by the French, that was at a time when the French were at peace with the Dutch — the war was a war in 1684 between Spain and the French — and Barima was taken as a point that was to be held, as a point to be held in hostility, and a part of Spain's territory, and as to the French presence in Barima at that time there was, of course, no protest by the Dutch. I need not cite the evidence on these points as the Court must be very familiar with it by this time.

Just let me cite without reading a passage in the 2nd volume of the

Appendix to the Venezuelan Case at page 64, relating to the year 1695. During all this time as I have pointed out in connection with the discussion of the Moruca and Pomeroon post, that post was treated as a place where the Dutch were defending themselves against these attacks and threatened attacks from the French, and there is no pretence during all those years — there was no attempt by the Dutch to exercise any control beyond those frontiers. Between the year 1700 and the year 1714 which is part of this period and which was the period covered by the war of the Spanish Succession the only presence of Dutchmen for any purpose in this region is that which I have alluded to in 1699 and 1700 when they went to the mouth of the Waini to salt. In 1712 the Surinam party passed by there. That can hardly be alleged as the exercise of Essequibo jurisdiction and in 1713 there was this statement of the Commandeur of Essequibo which I have read :

“ What has been said about the annatto, might likewise be observed with respect to the copaiba trade — that is to say, when that trade exists ; but for a considerable time it has not been possible to carry it on, because of some dislike which the Spaniards (on whose territory the copaiba is traded in) have taken to our nation, ”

showing there was no suggestion this trade was being carried on in that quarter.

Now from 1713 to 1732 — a period of practically twenty years —

Lord Russell. — I thought the period you were going to deal with was 1648 to 1814.

Mr Mallet-Prevost. — Yes; and I mentioned in 1699 and 1700 these fishing vessels went to salt at the mouth of the Waini and I referred to this extract in 1713 as for the balance of that period. From 1713 to 1732, I say, there is silence as to that region except the petition of certain Dutch traders in 1717 which the Tribunal is familiar with and another proposition which was made in the year 1722 by an engineer of the name of Maurain-Saincterre. He was sent out by the Company. I do not know if he went out or was sent out but made some survey of the colony particularly about Kijkoveral and the falls of the Essequibo, Cuyuni and Massaruni, and he made some suggestions about extending plantations along those rivers and also made suggestions that plantations be established in Barima.

Of course nothing was done on that whatever. I mention it because I am not omitting a single instance where this region is mentioned.

Now from 1732 to 1734 we come to an incident which has been mentioned a number of times, but has not been fully treated, it is the incident of the Swedes at Barima and I want to present the testimony, on that point, to the Tribunal.

The first document in that connection is in the second volume of the Appendix to the British Case at page 48. I want to take up first the conduct of the Dutch authorities in this connection, and then to contrast

it with the conduct of the Spanish authorities. This is the statement of the Dutch Governor.

“ His Honour further gives me to understand that he has brought some troops. — ”

he is referring to the Spanish Governor

“ to the Orinoco, and that he expects 10 or 12 barques more with militia, whereof his Honour informs me — ”

in passing I call the attention of Lord Justice Collins to the fact that Santo Thomé at that time expected these reinforcements —

“ in order that there may be no uneasiness, or any the least apprehension, giving as reasons for this sending of so many troops to these frontiers, that he was persuaded by advices [received] that the Swedish nation was intending to found a Colony in the River of Barima, lying between the Orinoco and your Honours' Post at Wacquepo — ”

that phrase by the way has been, by the Attorney General in his argument, put into the mouth of the Spanish Governor, and used as an argument to show that Spain was admitting Barima was something beyond Spanish territory. That is an exceedingly forced construction, I must say, to put upon these words, and I think a very unfair one. Here we have the Commandeur writing to his Company saying what the Dutch Governor told him, and he stops in a parenthesis to explain where the Barima is, and he addressed the West India Company at home and says :

“ Lying between the Orinoco and your Honour's Post at Wacquepo. ”

of course that could not have been the Spanish land.

“ and he could not persuade himself that the Dutch nation would tolerate in their neighbourhood so proud and haughty a nation as the Swedes; he declared in good faith and open-heartedly that this was the cause of his arrival with so many troops, and he also earnestly requested me also to impart to his Honour any advices thereof I might have. Considering it my bounden duty to inform your Honours of these particulars, I have further the honour to submit to your Honours' consideration First, since the Spaniards are making themselves so formidable by the collection of a considerable number of troops, and we, on the contrary, are very weak here, whether it would not be of the greatest necessity to send hither some reinforcements of militia, especially since the real object of the Spaniards is unknown to us. Secondly, if the Swedes undertake to try to establish themselves between the Orinoco and this Colony. ”

about that language there can be no sort of doubt; that was the language of the Dutch Governor —

“ on your Honours territory, I should be obliged to try to prevent it, 'which, with the few soldiery that there are here, could hardly be attended with an expectation of success, and it will serve for your Honours' information on this subject that, after the departure of Captain Laurens Brander (who, in the year 1732, in the month of March, arrived in this river to provide himself with water and wood on the little ship the Fortune of Gothenburg), a rumour spread in this Colony that the said Captain Brander would again return in order to take possession in the River Barima of a tract of land which the King of Spain is said to have presented to the deceased Elector of Bavaria —

that is the view which the Dutch Governor took of Barima at that time —

“ who was Governor of the Spanish Netherlands, and which the Elector had again presented to the King of Sweden; but, concerning that, nothing until now having been undertaken, it appears to me that the Spaniards are using this as a pretext to conceal their real aim. They also are spreading rumours that new forts will be built for them, and then their mines are going to be opened, but all this is uncertain. ”

Now this was a letter by the Dutch Governor to the Home authorities, a letter which told those authorities that there was an attempt to take the Barima, and if we put the construction on the Governor's language that he was making any claim to Barima it only makes the fact all the stronger that this letter received no reply whatever from the Home authorities. Here is a statement by the Dutch Governor that Spain was disposing of Barima, that it had made some transfer of it to the Elector of Bavaria, and yet not a word of protest, not a word of instructions from the West India Company in answer to all this.

That is the connection of the Dutch with the Swedish incident at Barima.

Now I propose to turn to the other side and see how the Spanish authorities regarded this. I call attention to a document in the third volume of the Appendix to the Venezuelan Counter Case at page 37 under No. 18. This is an order from the Governor to make a reconnoissance of Barima.

“ Say, that inasmuch as it is necessary and proper to send an expedition to the mouth of the Rio de Barima in the jurisdiction of this Government — ”

of course that at once negatives the presumption that the Dutch Governor was quoting the Spanish Governor's language —

“ by reason of the information received, that the Swedes are settling at the mouth of this channel, and of the injury this may cause to the service of His Majesty. I, hereby order and command the Lieutenant of Accounts, Captain Don Antonio Pinto, to prepare a ship, with the necessary crew of oarsmen, provisions and munitions of war belonging to His Majesty, and of which he is in charge as such Royal Official, in order that Captain Juan Miguel Hernandez, to whom the corresponding orders for this undertaking will be given, shall proceed to reconnoitre the said settlement. All this is to be made known to said Lieutenant of Accounts and to said Juan Miguel Hernandez, so that each one on his part may take such steps as may be proper for the service of His Majesty. ”

At page 38 we have the report of this Hernandez and the reconnoissance that he made.

“ In this City of Guayana, the 21st day of November ”,

and so on —

“ appeared before me Captain Juan Miguel Hernandez, having returned to this city today, the date hereof from the reconnoissance which he was sent to make of the Swedish settlement. Who said, that, having gone to sea by the principal river, Orinoco, entered through the channel called Barima, where said people had been, according to information given to him by the Carib Indians who live on said channel, they had seen about three months before a great many white people in two ships and one sloop, looking around for some place to settle in, and pacifying the said Carib Indians with valuable presents of cloths, beads, knives in abundance, machetes, axes and lots of liquor, which the said Indians received with great pleasure. ”

May I call attention to the fact that here where we have an illustration of what is so patent upon the surface that it seems absurd to call the attention of the Tribunal to it, that these Indians were ready to make friends and become allies with anybody who would treat them in this way and give them presents. The Spanish gave them presents, the French gave them presents, the Dutch gave them presents, the Swedes gave them presents, and everybody who wanted to get anything out of them gave them presents.

“ And they were expected to return this Spring, about the coming March, as they gave the said Caribs to understand, that, the said Swedish ships would return to renew the search for a place to found a settlement in said channel, which they did not do that time for want of pilots, because the Hollanders of Berbis and

Surinam did not wish to furnish them with any. The Carib Indians said also that the Hollanders had notified them (the Caribs) not to show those men any good places for settling, because they were bad men, and they (the Hollanders) would give them what they needed."

At page 282 of the second volume of the Appendix to the Case —

Lord Russell. — The result of that is the Swedes were not there.

Mr Millet-Prevost. — They probably made a visit, but made no settlement. I have no doubt they did touch at Barima, and there is some foundation for this. The only importance is to show how it was regarded by the Dutch on the one hand and by Spaniards on the other, in case any one came and settled on their territory, what the Spaniards would do, and the utter indifference of the Dutch to it.

At page 282 of the second volume of the Venezuelan Case Appendix, this is from a Consulta of the Council of the Indies in Spain.

" And when that service had been performed, Juan Miguel Hernandez was instructed to continue exploring the coasts; and the said Hernandez has reported that, having sailed out of the River Orinoco by the Grand Mouth, he noticed, in the Creek called Barima, the place where the beforementioned Swedes were located, and that, according to the information he received from the Carib Indians who dwell there, they had seen a number of white men and a large schooner, who were looking for a convenient place on which to settle, and making presents to the Caribs of hatchets, knives, ' matchetes ', and rum, with which they were much pleased, telling them they would return in the dry season. And that these same Indians declared that two launches with Frenchmen, with some fugitive negroes, who were trying to reach Guayana, having come to that creek, they killed the Indians, and took the launches and the effects they contained. "

And then the next one, No. 348, on the same page, we have the Order of the King to the Governor of Cumana to report on the settlement. At the top of page 283 this statement is made; it is the same thing, but it shows the seriousness with which the matter was regarded. I will not read these extracts, they are before the Court. It shows the seriousness with which this matter was regarded and the measures taken by the Spanish authorities to prevent any intrusion upon the Barima.

There is another order of the King on page 283, at the bottom, and 284 which I shall not read.

Chief Justice Fuller. — Order from the King to prevent a settlement?

Mr Mallet-Prevost. — Order from the King to prevent a settlement. Now the only answer which is made by the Attorney General to this

is that Spain did not have the power to do what she claimed she would do if they went there. I think that is a very difficult question to settle. We have read the statement of the Dutch Governor as to his weakness; he could not do anything and says so to his Company, and advises his Company to send out some re-inforcements because the Spaniards are so strong, and quotes the Spanish Governor as saying he expected reinforcements.

Lord Russell. — 12 barques?

Mr Mallet-Prevost. — Yes.

Lord Russell. — I want to know where they were coming from.

Mr Mallet-Prevost. — Possibly from Trinidad or somewhere along the coast; if “barques” is to be taken as having reference to some small vessels. I do not care what the facts may be about that; it is a very poor defence to set up to this claim of jurisdiction (which is a genuine claim of jurisdiction and intended to be asserted and made effective) to say “Oh, well, they could not have done it if the occasion had arisen”, but that is the only answer that is presented by the other side. Then a number of documents have been cited by the Attorney General in that connection to show the poverty of Santo Thomé at that time; every one of them has reference to Carib slavery and to the war that was being carried on with the Caribs. I will deal with that subject later.

Now from 1734 to 1737 there are a few references to incidents some of which have been treated with.

The first in 1735 relates to Cauderas, allowed to go to Barima to collect slaves, and ran off to Martinique.

The second, 1739, is of more importance. Certain measures proposed by the Marquis of San Felipe y Santiago to keep the Dutch and French out; that is in the British Counter Case Appendix at page 185. This is important as showing how Spain regarded this at this time.

“The Marquis of San Felipe y Santiago in execution and fulfilment of his orders |reports, referring to the first point :
1, Namely, what means could be used and employed for dislodging the Dutch from the Colonies in which they have established themselves on the Orinoco —”

this is defined in a moment below, but it is one of the expressions that has been made use of by the other side —

“and even if this could not be done entirely, how they could at least be restrained and their commerce lessened so as to stop the audacious proceedings they have carried on up to the present time. ”

Lord Russell. — This has been read before, more than once.

Mr Mallet-Prevost. — I was not aware of the fact; I have not read it, but if the Tribunal is thoroughly familiar with it —

Lord Russell. — You did refer to it according to my recollection.

Mr Mallet-Prevost — Possibly it has escaped my mind. It is difficult when one is somewhat familiar with these documents to remember if he has been reading these to himself or to some one else. I will ask the Tribunal in that connection to make a note of this, page 185 and the top of page 186.

The third incident in this period is the proposition, referred to many times, about establishing a Dutch post in Barima at the request of the Caribs so as to catch Arawak slaves, a suggestion which of course was never carried out.

The next incident in this connection is one that was referred to by the Attorney General at page 359, revised page 367 of the notes;

“ It is a mistake if you speak of it in a strictly geographical way. If you speak of Pomeroon as a district, as it was frequently spoken of, it is quite correct. Upper Pomeroon would include the Waini as a district, and “ in a branch called the Waini ” means in a river called the Waini. It is not a branch of the Pomeroon but it is quite clear that they are referring there to the district of Pomeroon. ”

That statement is made in connection with some evidence to which I desire to call attention, in the second volume of the Appendix to the British Case at page 45, where it speaks of certain Indians who are referred to as being subject to us in the Pomeroon and Waini. ”

The President. — You have read this.

Mr Mallet-Prevost. — Yes; I want to bring two or three extracts together in this connection.

“ I should have allowed this opportunity to pass, had I not thought it my duty to give your Honours information that the Postholder of Wacquepo and Moruka came the day before yesterday to inform me that a nation of Indians have come down from Orinoco and have attacked the Caribs subject to us in the River Wayni, have killed several, ”

and so on.

Now will the Tribunal turn to page 48.

Sir Richard Webster. — I think my observation refers to page 70.

Mr Mallet-Prevost. — I am coming to page 70, I want to bring the three together. Page 48 is the next one and relates, of course, to the same incident, the attack upon Caribs that were said to be in the River Waini, but here the location is given somewhat different.

“ Your Honours’ favour of the 1st November last year by the ship ‘ Jalousie ’ came duly to hand, and I have the honour to reply thereto that in Wacquepo and Moruka all is again still, as the nation which arrived there. ”

that would seem to point to the fact that the attack had not been in Waini, but that the attack had been at Wacupo and Moruca —

“ which arrived there with the intention of killing the Caribs dwelling there — ”

that is Wacupo and Moruca —

“ was received by them reasonably — ”

and so on.

And then we come to the passage on page 70 which it seems to me clinches the matter.

“ It having been represented by Councillor van Dorn that certain runaways are in the Upper Pomeroon in a branch called Waini, and that a Carib — ”

and so on. I think there is no sort of doubt that the Waini which is here referred to is not the Waini that we have been treating of, but is another river called the Akawini, a tributary of the Pomeroon. My reason for saying that is this : in the first place we have the three passages which relate to the same incidents, the second of which speaks of the attack upon the Caribs in the Moruca, and then we have this other significant fact (which I think places the matter entirely beyond dispute) and that is on page 70 where your Honours will see the Dutch word is “ *Wayinie* ”. I have taken the index which has been prepared by our friends on the other side, under the word Waini, and have examined the spelling of that word in every document in which it occurs throughout the Dutch period, and that name is never spelt the way it is spelt here. It is spelt “ *Wayni* ” “ *Weina* ” and “ *Waijne* ”, and various ways, but never is spelt *Wayinie*. When we take that fact into consideration and that this occurs only once; that it is referred to here as a branch of the Pomeroon, which the Akawini is, and when another document speaks of the attack upon Caribs at Moruka and Wakepo I think it is clear to demonstration. I think it is clear what is referred to is not the Waini, but the tributary of the Pomeroon.

Sir Richard Webster. — If you look at page 45, the first document, it is obvious that is the river, in the other references to it in the same letter to which you have not called attention.

Mr Mallet-Prevost. — What reference have I not called attention to?

Sir Richard Webster. — On the same page 45, between B et C.

Mr Mallet-Prevost. — I read that.

Sir Richard Webster. — No, you read the upper one.

Mr Mallet-Prevost. —

“ Wherefore I have provided him with powder and shot, with an order to collect together all the Indians subject to him, and, as far as practicable, to assist the Caribs aforesaid, with a promise that I will give him support from here if it became

necessary. And since I have strong reasons to suspect that the Indians have been sent by the Spaniards of Cumana, I have ordered him to investigate the matter as far as practicable; and I have expressly forbidden him to set foot upon the Spanish territory — not even to go below the River Wayni. ”

That does not militate against what I have been saying. I do not say that that reference is not to the other Waini, but I do say, when he refers to

“ the Caribs subject to us in the river Waini ”

and the attacks upon *those* Caribs; when in another document we have the statement that where the attack was, was at Wakepo and Moruka, and the third document speaks of the Waini where those Caribs were, that it was a tributary of the Pomeroon, and on the top of that we find that Waini is spelt in a way in which the River Waini is *never* spelt in the evidence, and the statement is made :

“ There are certain Caribs subject to us in the Waini (*Wayinie*). ”

it is in the Akawini, a branch of the Pomeroon.

(Adjourned for a short time.)

The President. — Mr Mallet-Prevost, please to continue your argument.

Mr Mallet-Prevost. — Another incident, Mr President, in the period with which I am dealing is the case of the Essequibo Dutchman, Tonsel, who was reprimanded by the Governor at Essequibo for ill treating the Indians of Barima. I have already dealt with that incident. Another one also in this same period is that with which I dealt this morning, which was the granting of timber rights in the Waini from the year 1754 to 1756, in those two years, and I pointed out that it was a matter of which Spain had no knowledge and which can hardly be regarded as an exercise of political control. And then we have the Van Rosen incident and the various other incidents which I have fully treated between the years 1760 and 1768. The Van Rosen incident as I have pointed out was put, by Storn van 'sGravesande himself, upon political control exercised over Van Rosen and was accompanied by an acknowledgment that the settlement itself was on Spanish territory. During those years, the expedition of Flores in the year 1760 should not be overlooked as a very strong evidence of the exercise of Spanish control in this region; and also an expedition in the year —

Lord Russell. — Did that leave any mark behind it?

Mr Mallet-Prevost. — In the way of settlement, my Lord?

Lord Russell. — You may say that it was an act of aggression or what you like, but did it leave any mark behind it in the sense of any possession by Spain, or centre of government or point of occupation or otherwise by Spain?

Mr Mallet-Prevost. — I thought that I had stated, my Lord, in answer to one of your Lordship's questions that I did not for one moment con-

tend that there was any actual Spanish settlement in this region, and I deny that there was any Dutch settlement.

Lord Russell. — What I meant is this. Does that aggression or raid or attack, whatever you may call it, which begins and ends by an entry upon given territory and there is an assault upon the people that were there, and after that a retirement, without its being followed up by any act of possession, and without leaving any sign of intended dominion, much less any seat of government or centre of government; does that amount to anything?

Mr Mallet-Prevost. — The Treaty under which this Tribunal is sitting provides that among other things to be considered is the question of the exclusive exercise of political control. Of course the question of the exercise of political control can only be made up by referring to different acts of control, and I refer to these various expeditions as acts of control; control that was distinctly put upon a basis of alleged right to control and acts which did, in fact, control, and which whether they left any settlements behind them or not, were carrying out Spanish orders in that regard. It was an exercise of Spanish jurisdiction, and, as such, it is pertinent in this case.

Lord Russell. — But nobody is doubting that. Then I may take it, that in point of fact, you say an act of aggression or attack or assertion of right, without anything following upon it or without any continuity in the assertion, is enough?

Mr Mallet-Prevost. — The thing that followed upon it, my Lord, was the expulsion of these Dutchmen from this region.

Lord Russell. — I know, — for a time.

Mr Mallet-Prevost. — And whenever an opportunity arose for an act of jurisdiction to be exercised, that jurisdiction was exercised, and I suppose that, in a general sense, that is quite true with regard to any district. A Government exercises jurisdiction in a district when the occasion arises for it to exercise control. Now these Dutchmen went there in the year 1760. They were there trading for slaves. The occasion arose for the exercise of control, and Spain did exercise that control. Now if she did not exercise control in the year 1761 or in the year 1762, it was simply because there were no settlers upon whom it could be exercised; but whenever the occasion arose, she did exercise that control. She did in the year 1760. She did so again in the year 1768. She did so again in the year 1769 by taking possession of such Indians as there were between the Moruca and the Orinoco; and she did so in other expeditions which were subsequent to that date and which I have not yet called the attention of the Tribunal to because they were not directly connected with the Dutch at all. The Dutch had completely cleared out of that region, but there were expeditions that were connected with that region, that clearly go to show an exercise of political control by Spain.

Now the first document to which I shall call attention, passing to the year 1769, is in the 4th volume of the Appendix to the British Case, at

page 13. It is from a letter of the Director General of Essequibo to the West India Company :

“ What a pity it would be if such a flourishing Colony (such as this is now growing) were to be ruined by rogues and pirates, as must inevitably be the case if no powerful measures are adopted to resist the pirates from Orinoco and make them abandon their expeditions !

According to the last reports from the Postholder and from the Caribs, they are still all in Barima, having sent their prisoners to Orinocque — ”

this is an acknowledgment of the fact that, whatever the authority was at Barima at that moment, it was a Spanish authority —

“ and they threaten to come again at an early date, and not only carry off all the Indians from Pomeroon, but even to attack and plunder our plantations. ”

And then lower down, by letter C :

“ The said Owl being narrowly examined by me, through the medium of a very good interpreter, told me that the Spaniards in Barima, having been reinforced by another vessel, had at last attacked the Caribs themselves, captured several of the same, carried them off, burnt their houses and ruined their plantations ; that they continued to make raids all around and along the sea-coast, and that they were making preparations to come to Pomeroon, and that they said that when they had finished there they would come to Essequibo and attack the plantations and even the Fort itself. ”

Lord Russell. — This letter is written by Gravesande?

Mr Mallet-Prevost. — Yes, it is Gravesande who is saying this.

Mr Justice Brewer. — Gravesande was the Director General of Essequibo at that time?

Mr Mallet-Prevost. — Yes ; he was.

Now this exercise of jurisdiction in Barima by the Spaniards in the year 1769, which is here alluded to, may not have resulted and did not result in any Spanish settlement in Barima, but it was an exercise of political control, an exercise that was recognised as a fact by the Dutch Governor who did not for one moment attempt to interfere.

Now in the second volume of the Appendix to the Venezuelan Case, there is another document of the year 1769, at page 197. This is in the middle of that page.

“ Three excellent slaves of John Liot, carpenters, have run away to Orinoco ; he has been in pursuit, but was compelled to

return, the Spaniards (so he says) having followed to beyond Pomeroon ”.

Now if the Dutch were controlling that region, why should the Dutchmen be compelled to return, followed by Spaniards?

Then :

“ The man whom Vulschow had sent in pursuit of his slaves, and who, as I had the honor to inform you in my preceding letter, had been seized and put in chains by the Spaniards, has come back. ”

And then down below that, referring to the Spanish Governor, there is this :

“ That Governor bragged considerably to this man, and said that the land belonged to His Catholic Majesty as far as to the bank of Oene, and that he would come and seize those plantations which lay on Spanish territory. ”

Now, Mr President, that is important, because it shows that, whatever was being done at that time by the Spaniards was being done by a claim of right. They alleged that that territory was Spanish territory, and they were excluding Dutchmen from there because it was Spanish territory. They were pursuing them as far as the Pomeroon, and when it came to defining their territorial rights, the Governor pointed to the Creek of Oene which is right at the mouth of the Essequibo, claiming that the whole of that coast was Spanish.

In the same volume, at page 188, there is another reference to this same year 1769. It is document No. 260, and is a letter from the West India Company :

“ No more than you are we able to divine the reason why the Governor of Orinoco in person should remain stationed with two armed boats in the mouth of that river. Here in Europe at least we do not hear of the least rupture, and perhaps the state of feeling in Orinoco is the only cause of it. ”

All this was one story. The Spaniards were exercising control there. There were complaints by the Governor, not perhaps complaints, but there were references to this control by the Governor in his letters to the home authorities, and they write in this way recognizing the fact of the Spanish presence in this quarter.

There was an expedition in the year 1774 to which I desire to call the attention of the Tribunal. The record of it is in the 4th volume of the Appendix to the British Case at page 127, at the bottom of the page :

“ Since I had the honour of writing to your Lordships by Captain Van Las, a copy of which is sent herewith, nothing of importance has occurred in this Colony, except that we have

been continually annoyed by the Spaniards, who, to the number of forty, recently came down as far as the Post of Maroco, carrying off with violence or killing all the free Indians in those parts, by which these people who are of such advantage to our Colony are at once driven out of our land, they fleeing in whole troops to the River Corentyn.

Unless your Lordships are enabled to adopt efficacious measures most speedily in this matter and in the matter of the slaves running away to the Spaniards, we shall all be totally ruined here some day; your Lordships will be pleased to bear in mind that here we can never be successful in preventing these invasions and the running away of our slaves, either by establishing forts or by keeping boats lying out, as some wished to do, and perhaps still do. No, my Lords, our illustrious Sovereign will have to interfere seriously in this matter, and see that we get redress from the Court of Spain. There is really *periculum in mora*, because when once the horse is out of the stable we shall never get it back again; when once the Indians have fled they will never return here, and when they are gone, our slaves will run away up the river to make plots there, and will always be a source of anxiety to us. ”

This particular attack in the year 1774 was made the subject of a complaint by the Dutch authorities to Spain, but that complaint, and it is a most important point, was distinctly based upon the allegation that the Spaniards were coming to the Dutch posts and to the Dutch colony itself, and were carrying away the slaves. And when that allegation was made to the Spanish authorities, the Spanish authorities very naturally said : —

“ We will investigate that and if that has been done, we will see that the perpetrators of that are punished. ”

But the complaint had nothing whatever to do with the presence of those Spaniards beyond the Pomeroon and the Moruca region. They were there. There was no complaint about their being there. The complaint was that they had come to the post of the Company and from that post had taken away the Indians.

Now there was another expedition in the following year, 1775, and the record of it is at page 137 of this 4th volume in the middle of that page. This is from the Director General of Essequibo : —

“ I take the liberty of forwarding to your Lordships the copy of the letter sent to me by the Postholder of Maroco, from which your Lordships will again be made acquainted with the liberties taken by our injurious neighbours the Spaniards. I will submit that letter to the consideration of the combined

meeting of the Courts, but it will be impossible to arrive at any useful conclusion in the matter. ”

And this is the enclosure :

“ This serves to inform your Honour that on the 8th of this month the Spanish Captain Mattheo, having with him fifty men — ”

and the fact that a part of this expedition was as large as it was, namely fifty men, shows the strength that must have been at the back of it —

“ amongst whom there was also Hendrik Rodemeyer, who ran away from the mouth here (have been here), and taken away all the Indians and boats, going as far as a distance of more than two hours below the Post; ”

that means to say in the direction of Essequibo —

“ they have even carried off the Indians who had come hither to lay out plantations, although I told them that the Indians belonged to me and were in my service, but they answered; We found them on the Water. So that there is no longer an Indian to be found in these parts. The Spanish Captain said that they had come to look for the Indians who had killed the Spaniards — ”

that shows an exercise of control and jurisdiction —

- “ and that they had come in two large vessels lying at Biejarra at the mouth of the Hittaba, and that he, the Captain, had been sent out from those vessels, ”

so that it is clear that even this Dutchman, with the 50 men who arrived at the post, was only a part of the expedition that came, the main part of the expedition remaining at the Itabo, which as I have already pointed out was the boundary of the region on this coast. Then he goes on thus —

“ and he further said that his lord and master would shortly set a guard in the creek of Weena, called the Barmani, and that the whole of Maroekka also belonged to the Spaniards, and I thereupon answered that the River Barima belonged to the Swede, and Weene, as well as Maroekka, to the Dutch, and they said that it was not so ”.

Of course, the admission of the Postholder amounts to nothing, but here is a claim of right by the Spaniards that this region was theirs, and that what they were doing they were doing in the exercise of sovereign rights.

In point of time, the next expedition was the expedition of Inciar

in the year 1779, which has been referred to a great many times but in connection with that expedition I want to point out some facts which have not been brought forward, and that is that it was not like these other expeditions, a mere exercise of political control in a region, but that its origin was founded in the desire to settle and to populate this region and to establish settlements in it, Inciarte having been appointed as a Commissioner for that very purpose, and in that connection I invite the attention of the Tribunal to page 194 of this same volume.

Lord Russell. — This is the gentleman who travelled a considerable distance through all that territory?

Mr Mallet-Prevost. — Through all the territory. He was the first one who ever made a survey of that region.

Lord Russell. — And who is said to have told the postholder of Moruca that he was in pursuit of some gentleman of consideration.

Mr Mallet-Prevost. — Yes; he told him that. I shall have to refer to that fact presently.

Lord Russell. — I only wanted to see if that is what you were referring to.

Mr Mallet-Prevost. — My Lord, something was made of it by the other side. It seems to me that it is a most unimportant incident, but I may refer to it as it has been referred to by the Attorney General.

At page 194 of this same volume, just at the bottom, are these instructions, not instructions simply for survey but instructions for settlement :

“ It being of the first and chief importance in this matter, in order not to labour uselessly, to secure the boundaries of the said Province of Guayana, which begins, on its eastern side, to windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo, it shall be one of the first cares of the Commissioners appointed for this matter in making the new settlement to go as near as possible to the aforesaid Colony, endeavouring to select the most advantageous and useful site for founding the first settlement, bearing in mind that it will perhaps be necessary to make fortifications on that frontier to defend the boundaries, and that consequently it is requisite that the spot should be suitable for the erection of a fortress which, from the advantages of position, may have additional security against any enemies who may design to attack it.

The said Dutch Colony of Essequibo, and the others which the States General possess on that coast, are all in general on the banks of the rivers, close to the sea shore — ”

and I shall emphasize that fact when I come to treat of the interior —

“ and do not penetrate far into the interior of the country, and, consequently, at the back of Essequibo and the other Dutch

possessions, running eastward up to French Guiana [Cayenne] and southward as far as the River Amazon, the land is in part free from them and only occupied by heathen Indians and a numerous body of negro slaves, fugitives from the Dutch, and also from the French Guiana plantations. The Commissioners shall endeavour to occupy the said lands as appertaining to Spain, their first discoverer, and not afterwards given up, nor occupied at the present time by any other Power neither has any other Power a title thereto; and they are to advance their occupation on the eastern side as much as they possibly can, until they reach French Guiana — ”

speaking here, of course, of this interior —

“ and are likewise to extend themselves as much as they can on the south until they reach the frontier of the Crown of Portugal. ”

And, Sir, this becomes intelligible in connection with the map of Centurion to which attention was called before, and which shows the line of Spanish possessions going almost to the Amazon in the interior, allowing to the Colonies that had established themselves on the coast only that territory which they had taken up.

Lord Russell. — What is the meaning of that phrase at the bottom of page 194,

“ Which begins on its eastern side, to windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo ? ”

Mr Mallet-Prevost. — This is a description of the entire coast of Guiana, my Lord, and it seems to me that it will be intelligible if, looking at the map, that be read. There was the Dutch Colony of Essequibo (pointing it out on the map on the wall).

Lord Russell. — Please refer to the other map here.

Mr Mallet-Prevost. — My Lord, he is speaking here of the whole region of Guiana, and not of a limited region only; and that is the reason why I call attention to this general map. He says that the territories, being defined, begin at the mouth —

Lord Russell. —

“ To windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo ”.

Mr Mallet-Prevost. — Precisely, my Lord; he is there simply stating the facts. There is the Dutch Colony of Essequibo (pointing it out), and it is to the windward of the outflow of the Orinoco, and from there it comes on down.

Lord Russell. — It rather suggests that the border of the Dutch Colony was coming up to the windward of the outflow, of the Orinoco.

Mr Mallet-Prevost. — Of course, my Lord, I should not have thought so.

Lord Russell. — Of course you do not admit that, but the language of it is,

“ Guayana, which begins, on its eastern side, to windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo. ”

Mr Mallet-Prevost. — Why, my Lord, if your Lordship will just for a moment recollect, these very expeditions to which I have been calling attention went right up to the Pomeroon and to the Moruca; and he was alleging jurisdiction all the way to the Oene, which is there (pointing it out on the map). Will your Lordship kindly look at that point? He was alleging that jurisdiction all the way to there, — so that these words can hardly be interpreted as an admission that the Dutch were up to the Orinoco.

Lord Russell. — No.

Mr Mallet-Prevost. — It must be taken in a general way. He is speaking here in general terms, and defining large districts. It has been made use of in this way by my learned friends on the other side, but I submit it is absolutely untenable.

Now this is from the bottom of page 195 :

“ It would be very desirable that the said occupation of lands and their settlement should be begun in the rear of the Dutch settlements, close to French Guiana, and particularly to the rivers called Oyapoco and Arovak. ”

You will see what a large claim this was that was contemplated at this time.

“ Firstly, because, being more central, it would be easier to help the northern and southern extremities in case of attack on either part; and, secondly, because, the settlement having been established on the boundaries, the efforts of foreigners to occupy what belongs to us might be frustrated — ”

and then below on the same page, opposite letter D, there is this :

“ but even much nearer, they may in such a case, if they think fit, select for a first settlement the most suitable site in the country which lies between the mouths of the Orinoco and the Colony of Essequibo, endeavouring that by excellence of position, fertility of soil, and other qualifications, it may be healthy, pleasant, and profitable to the settlers who go thither. For since the first settlement and its results must decide the question as to the others which it may be desirable to found, it

becomes highly requisite and necessary to obtain and spread a good report, in order that others, being induced thereby may go and settle there, and by degrees the occupation and progress of the new settlement, and of the others which favourable circumstances may permit, may be effected, without losing an instant in spreading the settlement.

The occupation of the lands in all these countries must be taken up as part of the same Province of Guayana, and in the name of the Governor and Commandant thereof as its Chief and Head, by grant and appointment from His Majesty, and, under his orders in military and political matters, but subject to this Intendency in respect to the foundation of settlements and their agriculture and commerce. ”

And then on the opposite page just opposite letter B, there is this statement :

“ With this object His Majesty has been pleased to accept 12 000 head of cattle offered by the community of Catalanian Capuchin missionaries established in the same Province of Guayana, and has deigned to order their distribution among its inhabitants, for the encouragement of stock farms; and four or six thousand of them will at once be appropriated for conveyance to the new lands in question, in order that the said number of cattle being distributed among a proportionate number of settlers, they may receive extensive lands suitable for agriculture and have sufficient pastures and watering places for cattle breeding. ”

And on page 198, opposite letter C., there is this : .

“ This first village shall bear the name of San Carlos de la Frontera, and its church shall be dedicated to this holy Archbishop, with the title of Patron, for it is the name of our august Sovereign, who dedicates himself with so much care and vigilance to the propagation of the Holy Gospel, the erection of churches, the increase of divine worship, and the encouragement of colonization. ”

Those plans, Mr President, were not carried out, and they were not carried out for reasons which I shall mention in a moment. But certainly these plans which are extensive, which are serious, and which are distinctly based upon a claim of territorial sovereignty are plans which may be brought forward today in proof of what Spain considered was her right, and they are plans that compare more than favorably, I may say, with the suggestions from the Dutch side, that because there is something in the Dutch Records allowing men to go and cut timber in the Waini, because some one has asked permission to go to Waini, that that is to be taken as an evidence of the Dutch title. Mr President, if a settler can go to

the Dutch Governor and say—"I would like to go to Waini to cut timber", and although the Dutch Governor refuses him permission, if that act can be presented in evidence here and urged as a fact that goes to show a Dutch title, may not I point to this scheme not by a private individual, a scheme that was not thrown over by his Government, but a scheme that was devised by the Government itself for the occupation of this territory, because this territory was alleged to be Spanish territory —

The President. — Mr Mallet-Prevost, I am listening with great attention to all your facts and arguments, but I am puzzled by one question which I cannot decide myself.

You have referred to facts regarding all sorts of expeditions, Swedish and others, as a proof that the Spanish Government was immediately intervening in order to establish their sovereignty. If all these different expeditions of the Swedish and of the Dutch have been made in Spanish territory, do I understand that you admit that all these different attacks and expeditions of the Swedish and others have immediately provoked from the Spanish Government authoritative measures in order to make their position clear? Is that your argument?

Mr Mallet-Prevost. — I do not think that I have made myself perfectly clear about it, and I am much obliged to your Excellency for putting that question to me, because it enables me to state exactly my position in that regard.

The President. — You will prove that political control and sovereignty existed in regard to all the countries where the Swedish and the others came?

Mr Mallet-Prevost. — Mr President, I am not alleging political control as a basis of Spanish title at all. I am not alleging a title by prescription.

The President. — Then I have not quite understood it.

Mr Mallet-Prevost. — I am not alleging a title derived by Spain through these acts at all. The treaty under which this Tribunal is acting provides that exclusive political control of a district may be taken by the Tribunal as equivalent to settlement.

Chief Justice Fuller. — Adverse title or adverse holding.

Mr Mallet-Prevost. — I am not now quoting the exact language, your Honour, of the Treaty. I have gone from the beginning of my speech upon the theory that this country was all country the title to which was vested in Spain by reason of certain acts which I have related, based upon discovery and upon what I regard as occupation at the start.

The President. — Yes.

Mr Mallet-Prevost. — I have also shown that because of the geographical relations of these territories to each other that quite apart from any question of discovery or of occupation, Spain was entitled to all the region that was appurtenant to the Orinoco. Now I want to go further than that, not for the purpose of establishing a title but for the purpose of showing that in pursuance of the sovereignty which was vested in us we did exercise a political control.

The President. — Yes, I understand that.

Mr Mallet-Prevost. — And I do that not because it is necessary to strengthen my original title, which is strong enough, but because I am met on the other side with a counter proposition that they, the Dutch, exercised this political control in this region. I am therefore taking up this question of political control in the first place to show that the Dutch did not exercise it; and in the second place to show that the Spaniards exercised it in pursuance of their sovereignty, not for the purpose of acquiring a title to the territory, but simply as confirming the title that was already vested in them. The Attorney General in his opening has disclaimed any attempt to create a title here by prescription. Of course, he does not want to put himself upon that basis, but he has no other basis to put himself upon and he has brought these acts forward so that they may be taken to mean that, and the allegations in the British Case and in the British Counter Case clearly point to that.

It is an allegation that they controlled this region, and that therefore it is theirs. I say that they did not control it, and if we had not done a single thing, the territory would have been ours. Much more is it ours when I can point to acts of control which go to confirm the title that was originally in us, and to show that we were exercising that control by virtue of that sovereignty.

The President. — I quite understand your point of view, and in the Venezuelan Case and in the Counter Case, on page 197 of the Case, and on several other pages, the Venezuelan Government is proving that had there been Missions, for instance, or not, and had there been effective political control or not, is not the question.

Mr Mallet-Prevost. — Precisely; your Excellency has understood me perfectly.

The President. — Because the Spanish Government was the sovereign of this territory; that is your point of view?

Mr Mallet-Prevost. — Yes; that is my point of view, and I strengthen that by pointing out what, as a sovereign, it did.

The President. — I am much obliged to you. I wanted to clear that up for myself in order the better to understand your argument.

Mr Mallet-Prevost. — I am very much obliged to your Excellency for putting the question to me you have. It enables me to make my position clear, and I do not want to be misunderstood at all.

The President. — And from this point of view the Lord Chief Justice of England put a question to you with regard to the Swedish attack and the Swedish settlements, and you submit, I suppose, with regard to the history of this Swedish attack that it has nothing to do with the Spanish sovereignty or political control, and so forth?

Mr Mallet-Prevost. — Precisely.

The President. — If the Swedish and other attacks could be made on Spanish territory, is not that a proof, — I am rather putting the question to you which I put to myself — if all such attacks could take place,

attacks which provoked different expeditions from the Spanish Government, do not they prove either that there was no political authority or that the Spanish authority was not quite effective, because in a country which is well founded, attacks from other neighbours cannot take place without the knowledge of the authorities in the place which is attacked? And so I ask myself how can I explain the possibility of such attacks or expeditions made into Spanish territory. Do you understand my question?

Mr Mallet-Prevost. — Perfectly; you have made it exceedingly clear and I think your observations exceedingly pertinent if they applied to a district which is thoroughly taken up, and if they be applied to such an old part of the world as Europe where limits are perfectly defined and authority exercised not only in every square mile but in every square foot of territory. I should doubt however the application of those principles to other parts of the world. For instance if an expedition goes today to some uninhabited part of the coast of Africa and, whatever nation claimed sovereignty over that coast was there to intervene as against the intruder, I should hardly think the expedition sent out which might have been a private expedition could be taken as any evidence that that was open territory.

The President. — You think it is quite impossible to draw the conclusion that those expeditions proved that the Spanish Government had not a real political control in these parts of their proper territory.

Mr Mallet-Prevost. — I think the most that any such expedition could prove is that the particular individuals engaged in it thought that they could go there and not be molested. There is no proof that they were going there for the purpose of establishing a Swedish claim. I may go to day with a company of others engaged with me in business for the purpose of trade or for any other purpose and settle myself anywhere in the world along the coasts of South America or Africa, but that does not mean I go there for the purpose of establishing a sovereignty in myself or country on that coast. It may be nothing more than a private venture of my own. I may go to any civilized country for the purpose of settling myself. We are allowed in these times to settle in foreign countries and can the fact that in the year 1733 some Swedes, about whom we know nothing, went to Barima, visited the spot and left it, be evidence that Barima did not belong to Spain? Even if there had been national authority behind the expedition that went there, even if the Swedish Government sent an expedition there that would not be proof, but there is absolutely no evidence to authorize us to say that the Swedes who went there in 1732 went there for the purpose of establishing a Swedish authority.

Mr Justice Brewer. — Your contention is whenever Spain heard of those expeditions she took steps to stop them.

Mr Mallet-Prevost. — Yes; she took steps to enforce the power that she had.

Mr President. — I thank you for your explanation, I put the question because it interests me. My question was not even one of the chess moves of which Sir Richard Webster spoke; it was simply a personal question which I should like to have explained for myself.

Mr Mallet-Prevost. — I am obliged, your Excellency; it is certainly a help to me to have questions of that kind put because it enables me to present to the Tribunal our view of this matter.

Now, I think that I had finished reading from the fourth volume at page 194, and I was about to refer to the third volume of the Counter Case of Venezuela, page 95 which contains the appointment of Inciarte under this scheme. I do not think it is necessary to read it but it is an appointment that was made for the purpose of carrying this contemplated scheme of settlement out.

Then I want to make a reference also to the British Counter Case Appendix at page 217 which is a portion of this diary of Inciarte :

“ On the 6th of August of this year, 1779, at eight in the morning, I started from the port of the town of Santo Thomé de la Guayana with a felucca armed with two swivel guns, a launch with on 4 pr. and eight swivel guns, and two small boats, one having a brass swivel gun of 2 oz. calibre, all belonging to His Majesty, and manned by a doctor, a serjeant of artillery, a corporal of infantry, thirty militiamen, and sixteen rowers. ”

The number of soldiers here, is small as we view the matter today, but in those days, comparing the strength of the Spanish garrison at this time with the strength of the Dutch in Essequibo it was a very considerable body and I call attention to that fact. Then comes the incident about the flag at page 229 which was referred to by the Attorney General and also the incident mentioned by the Lord Chief Justice of England as to the statement that Inciarte made to the postholder. I hardly think it is necessary for me to spend much time over them, but it seems to me that to make anything of those simply illustrates a great lack of grounds to urge against this expedition.

Lord Russell. — What character do you give to the expedition, not as it was designed, but as those under whose notice it came would esteem it to be?

Mr Mallet-Prevost. — This first expedition of Inciarte was to survey. It was preliminary. The scheme was first formed and in the second place he was appointed for the purpose of carrying it out; but as preliminary to carrying it out he went upon the coast and made a survey. It was no part of his business to go and tell the postholder at Moruca what business he was upon.

Lord Russell. — There was nothing aggressive?

Mr Mallet-Prevost. — There was nothing aggressive; he made no settlement at this time. It was a first step in this plan and the way in which the matter of the flag and so on is referred to by the Attorney

General shows that it was rather an acknowledgement by Inciarte that the Dutch flag ought to have been flying there. This is what he says at page 229 :

“ Having reproached him as though the lands where the post was situated belonged to the Prince of Orange with not replying with the Dutch flag to that of our Sovereign he answered that he had no flag nor knew to whom the said lands belonged. ”

It is evident in reading the passage as to the way the whole thing was done, how it was none of the postholder's business and Inciarte rather played with him than otherwise. The Dutch authorities did have knowledge of this and they had knowledge of it in such a way that if they had thought for a moment that they had any right to the region beyond the Pomeroon they should have protested against it. They probably did not regard the proposition that some town was to be established over at the mouth of the Essequibo seriously, but they did know that there was a considerable Spanish detachment that came to the Pomeroon that passed through this region from the Orinoco to the Pomeroon and they took absolutely no measurements in regard to that.

Without reading the reference in that connection I will simply give the citations and call the attention of the Tribunal, if they desire to look into this point, to the British Counter Case Appendix, page 255, to the fourth volume of the Appendix to the British Counter Case at page 207 opposite C and E and F and to the statements made in that connection in the Venezuelan Case at page 146.

Now I pass from the year 1779 to the year 1785 and before doing so it would be well for me to point out that in the year 1781 there was war between Spain and England and that the hostile occupation by England at that time of the Colony of Essequibo is an explanation, as was pointed out when this matter was discussed before, why this particular scheme was at that time delayed.

Now coming to the year 1785, I call attention to the third volume of the Venezuelan Counter Case Appendix page 331 :

“ Having left this capital by order of the Governor and Commander General Don Miguel Marmion steering in a straight course to the Great Mouth of the Orinoco from thence passing into Barima Creek on the same day at ten o'clock at night we arrived at the port of San Miguel. Twenty-fourth day. At dawn we took on board the Cassave and at that same hour we left the said port. ”

Now opposite the twenty-sixth day at the bottom :

“ Day-break found us at the Portuguese Islands and at eight o'clock in the morning we found two *curiaras* belonging to Guaranño Indians who informed me — ”

Lord Russell. — What are those Portuguese islands?

Mr Mallet-Prevost. — I think those are the names of some islands in the vicinity but nothing is to be inferred from the name, my Lord.

Sir Richard Webster. — It is up in the Orinoco somewhere, my Lord.

Mr Mallet-Prevost.

“ who informed me that there was a schooner fishing in the mouth of the Waini and I steered straight ahead; the same day at eleven o'clock at night we slept at the Vuelta de Diablo. ”

Now at page 333 near the bottom of the page

“ And being asked by the Indian interpreter of the same nation named Afortunado as to whether there were any vessels of any nation on the River Barima or any negroes living with Indians in the woods, he replied that there were none and that only in Waini did any schooners enter from Demerara and Essequibo for fishing purposes and to cut *timite* to cover and build their dwellings. 30th Day. We slept in the mouth of the Mura. 1st day of July. At five o'clock in the morning we crossed to the mouth of the Waini and after visiting every part of it nothing was found but the places where the Dutch were fishing and salting fish. ”

And the balance of that I read this morning. It shows that this expedition of 1785 was an expedition sent out by the Governor from Santo Thomé for the purpose of exercising political control in that quarter and that it did exercise that control.

Now in the same year, in July, this expedition was followed by another and the extracts which refer to that are in the 5th volume of the Appendix to the British Case at page 40. It will be kept in mind as we read these other passages that in the one which I read from the 3rd volume of the Venezuelan Counter Case this Mattheo is distinctly recognized by the Governor and Captain General as a person appointed for this purpose by him. There can be no question whatever about Mateo's authority and the fact that he represented Spanish sovereignty in what he did. Opposite C.

“ Mr J. C. Bert communicates that he had heard from Indians that Mattheo, who is a Spaniard on the coast, mentions and threatens that he will overtake and burn our Post at Marrocco. ”

And at page 41 in the same Journal under October 7th, opposite D :

“ After which the Receiver, S. Crombel, having returned also unsuccessfully from his expedition, having left three men at the Post of Maroco, since it was maintained that there was

a conspiracy among the runaways who had not yet passed (the Post), but kept themselves in the forest.

At the same time, it was made evident to me from a letter of the Postholder that a Spanish barque managed by one Mattheo continually cruised by or about the Post, which skipper had expressed himself more than once in a seditious way, threatening to set fire to the Post; ”

showing clearly that Mattheo was coming along that coast right up to the Moruca itself. Then at page 42 in the same connection, opposite B, we have this, under November 10th :

“ Besides, he (Mr Paucen Mieden, *interim* Commander) showed me a fresh missive from the Postholder at Marocco to the effect that the Spanish captain, Mattheo (see 7th October last), aforesaid, continued with brutal and rest destroying threats, against the Indians.

On account of the approaching departure of the “ Kotter de Kempphaan ” (Dutch man of war), and the smallness of our garrison, I have not been able to apply the very necessary measures against him; ”

showing again the utter inability of the Dutch to do anything against these acts of the Spaniards.

Possibly in this connection it might be as well to call attention to the translation of some words which I think have caused a little ambiguity in connection with the description applied to these Spaniards by the Dutch Governor — the word “ privateers. ” The Lord Chief Justice was good enough to ask me some questions as to that and I desire to point out what these privateers were called by the Spaniards themselves. The word is wrongly translated and in the 4th Volume of the Appendix to the British Case at page 72 this will be made very clear opposite C. It will be noticed it is privateer according to the translation in the English column the corresponding word in Spanish being “ *lanchas corsarias*. ” That is cruising launches.

Chief Justice Fuller. — Does *corsarias* mean cruisers ?

Mr Mallet-Prevost. — Yes; and at page 78 the word has been properly translated, opposite F :

“ I have just learnt from some Dutch captured with their boat by our cruisers in the Orinoco ”,

and that is exactly the same word “ *nuestros corsarios* ”. The use of the word privateers in England has led to some confusion,

Lord Russell. — *Corsarias* suggests corsair.

Mr Mallet-Prevost. — Yes; that is the subsequent use of the word, my Lord.

Lord Russell. — And a *corsair* is less reputable than a privateer?

Mr Mallet-Prevost. — It came to have that meaning, my Lord, but the word *corsario* in Spanish is a cruiser.

Lord Justice Collins. — Is that the modern word for cruiser?

Mr Mallet-Prevost. — Yes; there is another word that is used which I do not recall at this moment. *Corsario* is also used.

Lord Russell. — What is the Spanish word for corsair?

Mr Mallet-Prevost. — In the English sense of the word, I do not know, my Lord.

Lord Justice Collins. — What is the Spanish word for privateer?

Mr Mallet-Prevost. — I am sorry to acknowledge my ignorance of the translation of that word also, my Lord. May be Mr Harris can help us out with regard to that.

The way in which these launches are referred to by the Spanish Governor shows that they are boats sent out by Spanish authority and takes away any inference that might be drawn against their character by the use of the word privateer in English. They were clearly boats sent out by the Spanish authority and not privateers as we understand the word in English, because it was not a time of war.

The control of this coast by Matheo and the Spaniards under him continued in 1786 as will be apparent from a passage in the 2nd Venezuelan Case Appendix, page 242, Document 321 :

“ The Commandeur makes known to this Court that he has received a letter from the Director General, inclosing a letter from Wm. van Langenberg to J. R. Gardner, which he lays before the meeting. Upon reading it, it appears, particularly from Langenberg's letter, that the aforesaid Langenberg had heard from Indians, who had come from Orinoco to warn their friends, that Mateo was ready to come to Pomeroon to carry off the Indians, also that the Spaniards had already seized and carried off some Indians there, and, lastly, that he Langenberg had been warned by one of the Indians who had been seized, and had escaped from his bonds, that they (the Spaniards) would come to plunder the post, and also had their eyes on the schooner of the aforesaid Gardner. ”

It was very natural that the Dutch should characterize these acts as acts without authority and as the acts of pirates, but as a matter of fact we know that Matheo was there in execution of a commission which had been given him by the Spanish authorities.

Now at page 45 of the 5th volume of the Appendix to the British Case is another passage, under B :

“ Accordingly the Court on the 10th August last resolved to restore the proceeds of the sold tobacco — ”

this appears to have been tobacco that was taken there at Moruca and sold —

“ as will appear to your Honours from the translation of the Minutes of the 10th August, forwarded herewith under Letter B, being the two Resolutions sent back with Matheo de Brilla to the Government of Oronoque. ”

Matheo de Brilla being recognized by the Dutch as an agent of the Government at Oronoque.

“ In the meanwhile there had, at the end of the month July, upon the arrival of the aforesaid Matheo de Brilla, in a launch commanded by Captain Dominique Taydell, who was present at our Post of Maroco with the Postholder Berthodi, been spread a rumour both by means of Rhewinkel, who had made a voyage to Oronoque, and had returned with this launch, also by means of a letter from Bertholy himself to the Commandeur, that the Spaniards had threatened if the tobacco were not restored that they would raid the Post, which they alleged was on their territory. ”

Then below E, we have this further statement :

“ I take the liberty to refer to the extract Minutes of the Extraordinary Session of the Court of Policy in Essequibo of the 10th August, as here accompanying under letter C, merely stating to your Honours in explanation that Matheo, of whom mention is made in this letter, is a famous Spanish privateer, who in the late war on our coasts had caused much uneasiness and harm. ”

And at the top of the next page ;

“ that the threats to raid the Post Maroco appear, only to be a popular rumour concerning which I deem it better not to write to the Government of Oronoque, it being far better to act as if we believed such excesses and violations of territory could never be undertaken by a civilized nation in time of peace, it also being very probable that the Government never thought of it. ”

Lord Russell. — On the previous page, as I gather, Matheo de Brilla and Tagdell both said we know nothing about that. You did not read that;

“ yet these two at once entirely denied that they knew anything of the kind about it. ”

Mr Mallet-Prevost. — Anything about coming to the post at Moruca. I am not presenting this as evidence of an exercise of control at Moruca. I present it to show that this Matheo who had been sent out by Spanish authority was along that coast as far as Moruca. Now comes the rumour

that he was going to Moruca to burn things and take people away. I don't say that is so but that is the way he was lied about. When it was brought to his attention he said I do not want to do anything of the kind, I am cruising along this coast under the authority of my Governor. At page 46 :

“ That the threats to raid the post Maroco appear only to be a popular rumour. ”

I think I read that.

“ Therefore, by writing to them about it we should either offend them or show fear ” —

that shows how afraid the Dutch were at that time to do anything against the Spaniards —

“ and thereby, perhaps, inspire them with a desire to do something of which they would not otherwise have thought. At the same time, it would be well to be on one's guard, wherefore Adjutant Boehm has been sent thither with ten men and ammunition, and holds the Post together with Bartholy; this will have two good effects, firstly, with inspiring the Spaniards with more respect, and, secondly, attracting the Indians (certain of protection against their old enemies the Spaniards) round the Post —

that is in line with other extracts that I have read —

just as the negroes in Guinea and the natives on the coast of Malabar and Coromandel settle in large numbers wherever a European factory is established in the hope of getting protection and employment. ”

Those were the Indians that, if any, were controlled by the Dutch — those immediately about their posts.

Now the plan for taking possession of this coast up to the Moruca which I have referred to in connection with Inciarte's expedition in 1769 while it had been delayed was not abandoned and we find references to the same plan in 1786 in the 5th volume of the Appendix to the British Case at page 47, opposite D :

“ The Intendente, Don Josef de Abalos, in a letter of the 12th April, 1780, announced the arrival of Don Josef Felipe de Inciarte, to whom he delivered the said letter for use as a credential, and to enable him to have the satisfaction of reporting to your Excellency concerning the matter of the settlement of the eastern part of Guayana with which he had been intrusted, recommending him at the same time for his good qualities and affection and zeal for the Royal service. But although the said

Abalos sent his official documents rendering account of what Inciarte had done in his commission in the same vessel in which Inciarte embarked, and in two others which set sail with him from La Guayra, they were not received because all the three vessels were captured. Inciarte, however, was able to save the said letter, and the original drafts of the diary."

There are some special passages here :

" In consequence of this the Intendente was informed in a confidential order of the 1st October of the same year, 1780, that His Majesty had resolved that Inciarte should return in order that the said Intendente should forthwith, or whenever he might consider it convenient, commission him anew for the said purpose of occupying and settling the places specified in his said report, and building therein two small temporary forts which he considered requisite, one to protect from the attacks of Essequibo the village which was to be founded as proposed in the said reports, close to the creek made by the little river or ravine of Moruca, at the distance of a quarter of a league from the Post or guard-house, which the Dutch have advanced to about 18 leagues from Essequibo towards the Orinoco —

showing that their proposition at this time was what it had been years before to take possession of this territory right up to the Moruca and to establish there their frontier —

placing the said [other] fort of from four to six guns in the same creek of the said river Moruca to prevent the passage of all hostile vessels and ejecting the Dutch from the said post or advanced guard house which they had built there. "

This goes even further than that :

" That the Intendente should instruct him that if the Governor of Essequibo should complain of this action he was to reply that he had proceeded in accordance with the general laws and instructions for the good government of our Indies, which do not permit such intrusions of foreigners in Spanish dominions as those are, and the same statement will be made here should any complaint be lodged by the States General of Holland.

By orders, also confidential, of the same date, the Captain-General of Carácas and the Governor of Guayana were directed to assist the Intendente and his Commissioner Inciarte in the attainment of the objects of his commission relative to the occupation of territories in the eastern part of the Lower Orinoco and the expulsion of the Dutch from the advanced guard-house which they held in Moruca, giving them the same instruction

given to the Intendente respecting the reply they should make to the Governor of Essequibo if he should complain thereof. ”

That shows a continued purpose through all this to occupy this region. Then at page 67 we have a statement of Marmion along the same line, opposite B :

“ Add to these advantages of its own defence the means of assisting the Island of Trinidad, when necessary, by provisions and other aids, both through the great Boca de Navios and through the various creeks which fall into the Golfo Triste by launches, schooners, and smaller vessels, and, finally, the advantage of harassing and exterminating illicit trade with equal facility, and preventing entrance into the mouths of the (establishments) [*sic*] and suspicious foreign vessels which have been accustomed to enter, and still do enter, to get gain, to fish, to cut down and carry away timber, to draw charts and take soundings of the river, as during the last war was done by a schooner of the English squadron, which took the Colonies of Essequibo, Berbice, and Surinam, until it became known to these citizens, who went out in their armed launches and seized it on their coast. ”

As late as 1790 these Spanish boats continued to coast along by this coast of Moruca, and that is in connection with a passage I read as to the Pomeroon-Moruca post at page 79 of this same volume where the Dutch Governor says that :

“ the Spaniards there sometimes come with armed boats called lances [*lanchas*] as far as Moruca and carry away by force the Indians who dwell there; ”

probably the translation given is the nearest translation — “ armed boats. ” and the Tribunal will remember that the Dutch Governor referred to the Moruca and that taken in connection with his reference to the Spaniards and these armed boats coming up the Moruca shows very clearly how by the Spaniards and the Dutch the line was regarded at that time. That was in 1790 and the statement is repeated in 1794 where he, in reference to the Moruca refers to the Spanish armed boats coming up to the Moruca.

Now some incidents have been referred to by the Attorney-General in his speech on this subject which I do not want to pass by. One of them relates to the year 1781 and is in the second Venezuelan Case Appendix at pages 238 to 240. At that time it will be remembered that there was war between Spain and England. England was in possession of the Essequibo and the Spanish boat came into the Essequibo itself and made some captures there. That was put forward by the Attorney General as something which we had alleged as showing Spanish control

in that quarter. Of course it did not. It was a capture made in the Essequibo and it was in time of war.

Now in connection with that there are some interesting facts and I will read a passage from the middle of page 239. This is from the Spanish Governor to the Dutch Governor — the Dutch Governor having made a complaint about Matheo having been there and made a capture.

The President. — This is the same Matheo.

Mr Mallet-Prevost. — Yes; he was there for many years :

“ While in the same letter you complained of Mr Mateo, who a few days before that event, being in the mouth of the river Essequibo, had taken possession of a little boat with five negro slaves, owned by an inhabitant of the colony, J. Milleken by name, and of another with three negro slaves belonging to another inhabitant, named William Vernon, which boat he had borrowed from an inhabitant of Demerara named E. M. Bermingham, all this having occurred at one and the same time — and this notwithstanding that the river Essequibo was entirely under the rule of the States General, from which it did not pass until the 8th of the aforesaid month of March ; ”

Let me pass to page 240, before I make any observation on that, where the Dutch Governor distinctly reaffirms the authority of this Matheo :

“ And also that the aforesaid Mr Johan Neuman has fully executed his commission, having transmitted to me the packet of letters through the Captain Commandant of the aforesaid fort. At the same time I make known to Your Excellency that the authority to pass judgment or decide as to the prizes made by the privateers of this province — ”

and at that time Matheo had been acting as a privateer; it was during the time of war —

“ belongs exclusively to the Intendent General thereof, Don Josef de Abalos, residing in Caracas, to whose high court all must address themselves — ”

so that the Governor here reaffirms and shows that Matheo was acting under national authority and tells the Dutch Governor if he wants redress he must apply to the High Court in Caracas with regard to the acts of •Matheo in the Essequibo. This was a complaint by the Dutch Governor but as regards that complaint against him it is not in Barima at all.

Now the Attorney General refers to the fact that at this time Matheo was in the Barima and this is at page 528 of the Tenth Day's Proceedings :

“ Then comes the incident he is going to send back certain slaves and boats that Mateo had taken. Then it appears that

Mateo went to Barima and was lying with his boat there and was carrying off everything without distinction. ”

Now it is certainly significant that the Dutch Governor thought it worth while to protest against an act of Matheo in the Essequibo and at the same time is silent as to what he was doing in the Barima and elsewhere.

Chief Justice Fuller. — Is the Spanish of this document anywhere?

Sir Richard Webster. — No; that does not happen to be in the Spanish; they do not print it in the Venezuelan Case.

Mr Mallet-Prevost, — The Spanish is printed of such documents as were called for by the British Case. This is not one, but it is available. This again is a document showing Matheo comes down as far as the Oene, the creek at the mouth of the Essequibo river.

In 1785 Matheo's cruising continued there as appears from the Fifth volume of the Appendix to the British Case pages 40 and 41. I have referred to those before.

Then at page 44 there is an incident which relates to the year 1786, opposite E.

“ The Court of Essequibo, in the month of April, decided to confiscate the lading of a Spaniard which arrived there without a passport, as your Honours will perceive from the French extract and translation of the Minutes of the Court of Policy of the 7th April, 1786, inclosed herein (letter A), and these goods being in consequence sold by public auction to the highest bidder, as all confiscated goods are, the Governor of Oronoque, Don Miguel Marmion (not satisfied with this kind of reprisal), has sent an Intendent or Supervisor of His Royal Catholic Majesty's tobacco farm named Matheo de Brille to reclaim this tobacco. ”

Showing the authority of this Matheo and at page 42 is a passage that I read before in another connection.

Now there are certain other allegations with regard to the year 1781, when the British were temporarily in possession of the Colony, which I desire to answer. The allegation is in the British Case page 57 at the bottom of the page :

“ In 1781 the British captured the Dutch Colony, and during the period of their occupation surveyed the captured Colony along the coast to a point beyond the Barima, and inside the Great Mouth of the Orinoco. A map was drafted by the officer in charge of this expedition and published in London in 1783. ”

And the answer which was made by Venezuela in her Counter Case, at page 52, gives the facts correctly, as established by the evidence.

I read from page 52 of the Venezuelan Counter Case :

“ Apart from a general allegation to the effect that Great Britain controlled the entire coast from the earliest days of the British occupation of Essequibo, the only *specific* acts, prior to the agreement of 1850, cited to support this allegation are an alleged survey of “ the captured Colony ” “ during the period of their occupation ” [1781], and an alleged apportionment of lands in 1797. The first of these acts was anything but a survey of the “ captured Colony ”. Writing about it in 1790 to the Count del Campo, Fermin de Sincinenea says, that *in anticipation of a war with Spain* the English, [when in possession of Essequibo, Demerara, and Berbice, had surveyed, or rather had taken soundings, along the coast from Essequibo to the Orinoco and *for even ten leagues up the latter river*. It is evident that this, so far from being a *survey* of a *Dutch Colony* was rather a *reconnaissance of Spanish territory* preparatory to a hostile attack. ”

In that connection I call the attention of the Tribunal to the evidence which is in the 5th volume of the Appendix to the British Case at page 163.

Sir Richard Webster. — I think that reference to Sincinenea is a mistake. If you look to the authority at the bottom of the page you were reading from.

Mr Mallet-Prevost. — I do not understand you, Sir Richard.

Sir Richard Webster. — I think you will find that the authority which is given for that allegation in the Venezuelan Counter Case does not bear it out.

Mr Mallet-Prevost. — I am going to cite the evidence upon that point. At page 163 of the 5th volume of the Appendix to the British Case —

Chief Justice Fuller. — At page 76 is the letter of Sincinenea.

Mr Mallet-Prevost. — It occurs in two places. I read it from page 163 of the 5th Volume of the Appendix to the British Case. This is :

London, June 10, 1796.

“ My dear Sir,

“ I have received your Excellency's three letters of the 18th May, and three others of the 25th of the same month. I shall reply separately to each as they require.

Don Mariano Luis de Urquijo will inform your Excellency to-day, with the exactitude and regularity he is accustomed to do, of the news to be reported concerning this country.

The news has been received of the conquest or occupation of the Dutch Colonies of Demerara and Essequibo by the English troops. This operation is more directed against Spain than

Holland, and it really appears that if we wish to preserve our Americas, we must not allow the English to obtain a footing on the mainland.

Once established there it will be very easy for them to carry out maritime expeditions against the important Island of Trinidad, the Provinces of Orinoco and Caracas, which are possessions of the first order, and which will be continually exposed. All that will be much easier if, to the conquest of Demerara and Essequibo, they add that of the neighbouring Island of Caracás [? Curaçao] as very probably they will already have done. ”

Just as I pass I might call attention to the fact that by this time Essequibo itself had so completely fallen into a second place that the whole Colony instead of being spoken of as one place is referred to simply as Demerara (not here here, it is Demerara and Essequibo) but it is spoken of as Demerara in another connection :

“ As it is not possible that the English Cabinet are ignorant how much they wound the interests of the Spanish Monarchy by this blow, a proceeding so openly directed against them is equivalent to a declaration of war, whatever may be the pretexts with which they wish to cloak their proceedings, so hostile towards us. I am too good a servant of the King, and lover of my country, not to speak out clearly and frankly and tell them what I understand of this affair. ”

Mr Justice Brewer. — There is nothing in that about a survey?

Mr Mallet-Prevost. — No; I am coming to that to show the way in which this occupation was regarded by the Spaniards.

Sir Richard Webster. — That letter is written in 1796.

Mr Mallet-Prevost. — It is in anticipation of that, Mr Attorney General.

Sir Richard Webster. — Oh! I beg your pardon.

Mr Mallet-Prevost. — I refer to 1781; the document I read from (B. C. App. V. p. 164 A) is dated 1796 but it is speaking of earlier events :

“ England has in fact showed openly her views against my dominions by the great expeditions and armaments sent to the West Indies and lastly by the conquest she has just made on the continent of South America of the Colony and river of Demerari belonging to the Dutch which advantageous situation puts her in the way to occupy other important points. ”

I am afraid that I must confess that I have a wrong reference here.

Sir Richard Webster. — I think the passage you want to comment upon is on the bottom of page 164.

Mr Mallet-Prevost. — It is page 76; that was the letter; I had the reference wrong in my notes, and I must beg the Tribunal's pardon in having

taken up time in reading some extracts which were not those I had intended :

“ In conformity with your Excellency’s commission I forward herewith two accounts of what I consider useful for the time of war with the English and the meeting place of the naval forces. ”

Sir Richard Webster. — This was in 1790.

Mr Mallet-Prevost. —

“ The province of Guayana is now in imminent danger of being the principal object of the enemy in the first war with which view the English at the time they possessed the Colonies of Essequibo Demerara and Berbice — ”

that refers to '1781 —

“ adjoining Guayana surveyed with more than twenty engineers in their boats from the said Essequibo to the Boca de Navios of the river Orinoco and even ten leagues up the river. Therefore not a single tree should be allowed to be cut down — ”

and so on. It shows the extent of that survey and the purpose of that survey at that time. It was not a survey which was intended in any way to be a survey of the Dutch Colony itself.

Sir Richard Webster. — I think it will avoid my having to clear it up after, if I interrupt now; the survey which we referred to and to which we gave the reference is in 1797 and referred to at page 164 in our Case that you have cited; we gave the actual reference to it. I am sorry to interrupt, but it will save time later on. What you have referred to is 15 years before. We also refer to the map that was sent home. If you look at the beginning of that letter, March 4th, 1797 you will see the reference to it.

Mr Mallet-Prevost. — The Attorney General is quite right and I had the wrong reference. The statement in the British Case is at page 62.

Sir Richard Webster. — That is quite right.

Mr Mallet-Prevost. —

“ In April 1796 the Dutch Colonies of Essequibo, Demerara, and Berbice, capitulated to the British forces.

Early in 1797 the Spaniards received information that the English had apportioned all the lands which stretch from Essequibo to Barima, and had planted stakes from point to point with the names of the grantees on notices attached.

In reporting this to the Court of Spain, the Governor of Caracas stated that from an examination of the exact map drawn up by Marmion, Colonel of Engineers, when Governor of Guayana, he concluded that the territory which extended from the Essequibo to Point Barima—from the south-west to north-east—comprised 47 leagues of coasts, with many rivers and creeks

which flow into the sea, while if the English had drawn their line from north to south to the fork of the Rivers Uruan and Yuruari, it would embrace about 40 leagues, and from east to west 46 leagues, forming the figure of a trapezoid. ”

Now it is in connection with that occurrence of 1797 that I intend to refer to the fifth volume of the Appendix to the British Case (page 164), and which I read in part. When the Spanish Government heard reports on this alleged survey it made these orders directing that this matter be investigated.

“ Although this news is not as clear as an affair of so much importance demands, I have nevertheless considered it well not to despise it altogether, and, consequently, in order to assure myself thereof, in conformity with my duty, I have dispatched Captain Don Manuel Astor, with the assistance of His Majesty’s revenue-cutter on this river, together with whatever boats and Indians he may consider necessary, to proceed at once to Point Barima, reconnoitre it and make a scrupulous investigation into the truth of this matter, or obtain proof that it is unfounded. In case of finding any of the Notices that are said to be posted up, he is to bring one back with him for greater evidence, but on no account is he to go any distance from that point, on account of the danger of falling in with the enemy’s cruisers, which are known to be cruising in the mouths of the river, or into an ambuscade which the English may have prepared. For the little force which he is taking to carry out his commission is not enough for a greater expedition.

With another despatch of the 3rd of the same month, No. 6, he inclosed me a copy of the account which Andrew Conde, master of a schooner belonging to that port, gave him. That Conde was made a prisoner of war and taken to Grenada, whence he made his escape, and where all those are detained who were taken from us by the expedition fitted out against Trinidad ; and he concluded as follows : —

“ The English told me that the Minister Pitt had resolved to cause the Spanish-American Colonies to revolt ; that, with this object in view, they had offered to help the people of Santo Domingo, saying that they would remain independent ; and that they had sent to Mexico with the same offers ; and that getting possession of the Orinoco they would attract the neighbouring provinces by making them advantageous offers ; and that they were not ignorant of the little or no force which we had here. ”

And lower down :

“ Having started on the 31st December last, and having ar-

rived by the creek Amacuro, at the Savannah, he found the entry closed — ”

that undoubtedly means the Moruca. —

“ for there are the head waters of the river Maruca, where the Aruaca Indians, whom he there found posted, informed him that on the east bank opposite the English had paid Indians in their service who, whenever they heard that the stakes placed at the entry to the savannah were being destroyed, were to tell others at the entry of the Creek, and give notice to the guard placed at the mouth of the Maruca — ”

showing at this time the frontier which was guarded was the Moruca itself —

“ here it flows into the sea, in which place they told him they (the English) had a number of cannon planted and a large force of soldiers without expressing the exact number. He added the following : —

They also told me for certain that from Essequibo to Point Barima the English had portioned out all the lands, with posts fixed in the ground, on which notices were affixed stating the names of the parties to whom the various lots belonged.

To form an idea of the area of the territory which extends from the Essequibo to Point Barima, I have examined the exact map, drawn up by the Colonel of Engineers, Don Miguel Mar-mion, when Governor of Guayana, and from the south-west to the north-east there are 47 leagues of coast, with many rivers and creeks, which flow into the sea — ”

Lord Justice Collins. — Ought not that to be from southeast to northwest.

Mr Mallet-Prevost. — Yes ; I think so —

“ with many rivers and creeks which flow into the sea and if they have drawn their line north and south to the fork of the Rivers of Yuruan and Yuruary it embraces about 40 leagues, and from east to west 46 leagues, forming the figure of a trapezoid.

Of all the news which he gave in his Report none has caused me alarm, or created consternation, except that of the wicked and detestable project of Mr Pitt to stir up the Americas to rebellion : for I cannot conceal from the King that if the English enter the Orinoco and ascend towards the Kingdom of Santa Fé and disembark at Macuco, the port of the River Meta, which flows into it, I much fear the hidden smouldering fire of the revolt of Socorro of the year [17]80 — ”

and so on. That shows that this whole thing was something that was directed against the Spaniards, and when it comes to the notice of the

Spaniards they at once take measures to investigate the truth and if such notices were posted up gave orders to take them down.

Sir Richard Webster. — There is nothing about taking them down, but it does not matter.

Mr Justice Brewer. — This was in 1797?

Mr Mallet Prevost. — Yes.

Mr Justice Brewer. — When was this Colony restored to Holland?

Sir Richard Webster. — In six months I think.

Mr Mallet-Prevost. — In 1803; after the Peace of Amiens, it continued, and came back to the English in 1814.

There is another statement in regard to the year 1801 which is on page 62 of the British Case.

“ In 1801, the British Commandant was ordered to report on the extent of the Colony. His report was illustrated by a chart which shows the boundary commencing at Barima and includes the territories claimed by the Dutch in their Remonstrances. ”

Now with regard to that the evidence of the report is in the fifth volume of the Appendix to the British Case, and will show a different state of facts. Hislop was the Lieutenant Colonel and the one who made this report. I read from opposite E.

“ The west sea coast called the “ Arabian coast ” is now likewise almost entirely settled. It is bounded by the River Pomeroon, at the entrance of which is the furthest military post, called the Post of Morrocco, from the name of a small creek which runs close to it. There is no part of this coast which is at all favourable for the disembarking of troops. The heavy seas known by the name of rollers — ”

and so on.

“ The foregoing lines are descriptive of the whole extent of that part of the coast of Guyana situated between the River Corantyn and the Pomeroon, and within which are included the colonies of Berbice, Demerary, and Essequibo, called so after their rivers. ”

Now I want to call attention to the map which was sent in that connection; it is in the British atlas, No. 36. The statement is made in the British Case as I have read that the River Barima was included. His report was illustrated by a chart commencing at Barima, and includes the territory claimed by the Dutch in their remonstrance.

Sir Richard Webster. — In the margin there the map is referred to 37; it is a misprint.

Mr Mallet-Prevost. — Yes; it is map No. 36 in the British atlas. I call attention to the line which is there drawn; it is a line I shall identify with the line that was claimed by van's Gravesande for a number of years and is really no other than the D'Anville line itself and does not include

the Barima. The Barima is not even shown, which goes very clearly to indicate that the person who drew up this map was very ignorant of that territory. Neither the Barima nor Amacura is shown. The Waini is included and the line is drawn from a point east of Barima and is intended to include the Waini itself.

Lord Justice Collins. — It does put in one river besides the Waini.

Mr Mallet-Prevost. — Without any name. The Barima is not shown and the Barima as your Lordship known flows in, to the southwest of the point and not to the east; so that the little stream whatever it may have been intended for could not have been intended for the Barima. That is the resuscitation of an old claim made by Gravesande and by the Company itself in the remonstrance of 1769, but which had been for many years practically abandoned as I can show by statements of the Governor himself who so stated.

I think this was the map that was referred to at one period of his speech by the Attorney General to prove that there had been a Dutch line which abutted on the Orinoco River, but of course this line does not abut on the Orinoco at all. There are some references to the succeeding years from 1801 on to most of which I have called attention in reference to other subjects, but which I will here mention so that the record may be complete.

The first is page 186 of the fifth volume of the Appendix to the British Case, and is —

“ Observations on the Colony of Essequibo and Demerary. ”

The boundary is given in this way :

“ It is separated from Berbice by the Abari Creek. The boundary with the Spaniards is disputed. According to Dutch, it is a line running north and south from Cape Brama or Brem ; and according to the Spaniards it is the Morucco Creek, a little to the westward of Cape Nassau. ”

That is a mere repetition of the old claim, a claim that appeared at various times on maps to which I shall call attention, but when the actual extent of the Colony is given we find it here stated.

“ It formerly consisted of two distinct Governments, and it is at present divided into the two separate colonial jurisdictions of Essequibo and Demerary by the Boarasiri Creek.

It is intersected by the Rivers Demerary, Essequibo, Poutarica and by several navigable creeks and canals. In the mouth of the Essequibo there are several large cultivated islands. ”

This is in connection with the year 1808. I read a reference which I shall only now mention in connection with the Pomeroon and Moruca

post in the fifth volume of the Appendix to the British Case page 198. E and page 190 A and B.

There is another for the year 1809 which I also read from the same volume, page 192 A and B.

Another for the year 1810 in the same volume, page 193, another for the year 1812 in the same volume pages 201 E to page 202 A.

All of those references show the point of view at that time. The Moruca was treated as the real boundary of the Colony.

Now the result of all this, Mr President, is that from the year 1760 on to the very end there was absolutely no attempt —

Lord Russell. — What do you mean by “ the very end ? ”

Mr Mallet-Prevost. — 1814; the end of the Dutch period. Of course the British were in occupation of the Colony for some of those years, but the year 1814 marks the end of the Dutch period. From 1760 there is absolutely no attempt by the Dutch to do anything whatever; the whole control was in the hands of the Spaniards; expedition after expedition from 1769 right on to the time of the British occupation, the Spanish cruisers going along the coast as far as Moruca, excluding the Dutch from that region, and being there as the visible agents of Spain in the exercise of a political control.

The years prior to that I have also gone through, and I think that I have pointed to every incident which is mentioned in any way in the evidence in this case and which has been brought forward by the other side as an evidence of Dutch control, and in every one of them the evidence of that control is entirely lacking. I have called attention to many cases prior to 1760, notably the incident of the Swedes coming to Barima in 1732, when Spain was called upon to show what she regarded as her rights in that region, and the action which she took in that connection. This completes the discussion of the evidence with regard to the history of the coast, and there remains to be treated in that connection only the subject of the Dutch Claims.

Lord Russell. — May I repeat here the same question? I think you have addressed a very powerful argument to show that Spain was not recognizing Dutch title in a great part of what is now in dispute, and Spain herself was asserting title in herself. At the end of that controversy and this proceeding in 1814 what remained in the disputed territory in the sense in which I have already put the question to you, visible, existing, evidencing Spanish sovereignty, dominion, or control, except Santo Thomé which was not in the district in dispute, and the Missions. Did anything?

Mr Mallet-Prevost. — Between the main mouth of the Orinoco and the Pomeroon there was nothing in the way of settlement or occupation by Spaniards or by Dutch.

Lord Russell. — I do not mind the Dutch; answer the question categorically if you please, if it does not embarrass you.

Mr Mallet-Prevost. — I have no objection to answer it categorically,

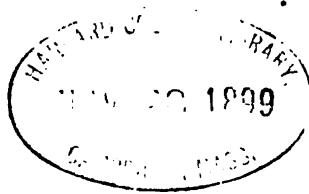
my Lord, if I thought a categorical answer would be truthful, but I do not think it would be in this case. I think during all this period Spain had been exercising control.

Lord Russell. — I ask you at the end of that period, 1814, what was there in the disputed territory to point to and say “ That is evidence and a monument of Spanish control? ”

Mr Mallet-Prevost. — Nothing in the way of settlement, but everything in the way of history of control.

Lord Russell. — Very well, that is an answer.

(Adjourned till tomorrow at 11 o'clock.)



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| | | | |
|-----------|-----------------|---|------------------|
| Thursday | August 3 1899. | — | Pages 1387-1449. |
| Monday | August 7 1899. | — | Pages 1450-1521. |
| Tuesday | August 8 1899. | — | Pages 1522-1596. |
| Wednesday | August 9 1899. | — | Pages 1597-1667. |
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THE GOVERNMENTS OF

HER BRITANNIC MAJESTY

AND

THE UNITED STATES OF VENEZUELA

TWENTY-THIRD DAY'S PROCEEDINGS. AUGUST 3 1899

The President. — Mr Mallet-Prevost, please to continue your argument.

Mr Mallet-Prevost. — Mr President, my examination of the history of the coast region would not be complete if I were to pass from it without a word respecting the *claims* and the *admissions* that from time to time were made by the Dutch as to the extent of Dutch territory. I propose therefore this morning to call the attention of the Tribunal to those claims, and as introductory to what I have to say, I beg to call the attention of the Tribunal to this fact which will be clearly recognized as I discuss the evidence upon this subject, and that is that whenever the question of a boundary came up in the minds of the Dutch, it was always with the idea that the Dutch boundary went so far and that beyond was Spanish territory. It was always the idea of a common boundary, never the idea of *terra nullius* between the Dutch line and the Spanish line. And if it is said that the theory of a title by discovery is a new invention of ours for the purposes of this case, I think that I may say that the invention of a theory of *terra nullius* between the Spanish and the Dutch is something absolutely new and unheard of — I do not say in the past century, but unheard of in this — unheard of and not mentioned even in the diplomatic correspondence between the two Governments, and suggested for the first time by Great Britain after the Treaty of Arbitration between Great Britain and Venezuela, and even then suggested, not in her Case, but suggested in her Counter Case.

I think it will be profitable, Mr President, for me to call the attention of the Tribunal first to the theories as to boundaries, such as they were, which existed in the Dutch mind prior to the administration of Storm van 'sGravesande. Storm van 'sGravesande had a very strong influence upon the colony, upon its internal management and upon its external claims, and it will be useful to ask what were the theories with regard to the extent of Dutch territories before Storm van 'sGravesande appeared upon the scene.

Mr Justice Brewer. — He was there from 1742 to 1772?

Mr Mallet-Prevost. — Yes; from 1742 to 1772. He was in the colony for one, two, or three years before the year 1742 as Secretary, but his administration first as Commandeur and afterwards as Director General was from the year 1742 to 1772. And I want to call attention to what were the theories prior to his coming. In that connection I shall call attention to three different dates, the date of 1684, the date of 1732, and the date of 1737. They are the only dates for which we have any data prior to the year 1742 when Gravesande arrived.

In the year 1684, we have the proposition, with which the Tribunal is very familiar, made by Abraham Beekman, the then Dutch Commandeur, to the Company that the River Barima should be taken into possession. I want to read a few lines from his statement in that behalf, because I want to show that when Beekman made that suggestion, it was with no idea of any territorial rights in Barima, but was limited purely to the question of trade and was made recognizing the fact that others were trading there, and that his going there was merely the coming of a competitor upon neutral ground. At page 45 of the second volume of the Venezuelan Case Appendix, is the letter from Beekman to the Company, and in that letter he says this :

“ Pomeroon begins annually to furnish much and good annatto, and much was brought from Barima, as appears from the inclosed list under No. 7, from which you see how much has been got by barter here at the fort as well as by all the outliers. But Gabriel Biscop and other sea-rovers from Surinam not only spoil that trade, but buy up all the letter-wood, which is there fairly abundant and good, together with the carap-oil and hammocks, as a result of which I have obtained this year only very few old and bad ones; they traverse and overrun the land even into the River Cuyuni. In order somewhat to check this, I have caused a small shelter to be made in Barima, and Abraham Baudardt, who is stationed there as outlier in place of Daniel Galle, who is going home, shall occasionally visit that place, and encourage the Caribs to the trade in annatto and letter-wood, which even the French from the islands frequently come and carry off with their vessels. It would, therefore, if I may suggest, not be amiss if the West India Company, in order to obtain the aforesaid trade — ”

and that was the purpose : it was purely a question of trade —

“ should take that river Barima into possession ”.

If that means anything, it means that it is an admission that that was not Dutch trade.

Sir Richard Webster. —

“ And to command the erection there of a permanent place for a postholder ”.

Mr Mallet-Prevost. — Certainly; to command the erection there of a permanent place for a Postholder. But for the same purpose. That does not in any way change the significance of the fact. I do not want to go again through the question of trade. I think I have discussed that very fully already, and I think I have shown that nothing came of this. His suggestion was either ignored or entirely disapproved by the Company. But nothing was done, and therefore it was useless to talk about establishing there a permanent outliership, or anything else. It is a question of trade. He puts it on the basis of trade, and he puts it in such language that it is perfectly clear that he does not mean to go there and oust the French nor oust the others. He is going there as a competitor upon neutral ground and the question of territorial rights is not in his mind whatever.

Lord Justice Collins. — It is hardly going merely as a competitor, if he proposes to take it into possession. Does not the meaning of that come to this, that whatever might be the right to exclude the French and other people, it would give him the right to exclude all the other Dutch people?

Mr Mallet-Prevost. — No; I think not, my Lord. There is no suggestion that he should exclude them. There is no suggestion in this that they have not got the right to go.

Lord Justice Collins. — Is not the meaning of the phrase “take into possession” this: that it should become the Company’s right so as to exclude all private individuals from it?

Mr Mallet-Prevost. — My Lord, I do not think that there is the slightest word in that passage which would indicate that. The effect of his taking it into possession would be the taking of it into possession for the purposes of trade in the way that any other district might be taken into possession for the purposes of excluding any other persons from it.

Lord Justice Collins. — I think it must be assumed that in the first instance it was trade, that they went there for. — They did not go there for amusement, but they went there for trade. All I put to you is this. Whether he was right or not in his thought, is not this the substance of it, that the Company, and not individuals, shall possess themselves of that river; that he, on behalf of the Company, should take it into possession? The effect of that would be that it would exclude individuals just as much from there as from any other parts of the domain in the Charter.

Mr Mallet-Prevost. — It would exclude the Dutchmen who were under his own jurisdiction.

Lord Justice Collins. — Certainly; that is what I meant.

Mr Mallet-Prevost. — It would not exclude foreigners from there.

Lord Justice Collins. — No; I put that in my question.

Mr Mallet-Prevost. — It is purely for the trade of the Company, and it would be exclusive in that regard.

Lord Justice Collins. — I am only seeking to interpret what he meant by that proposal. I think you are putting it too far.

Mr Mallet-Prevost. — I am not dealing with a question, my Lord, as

between the Company and its own colonists; I am dealing here with a question as between the Company and outsiders; and by outsiders I mean Dutchmen from other colonies and foreign nations. There is in this proposition a distinct recognition of the fact that there were others in Barima with whom the Company had nothing whatever to do. There is no suggestion in this proposition that they were to be excluded. If the Company was to go there and take that river into possession, it was for the purposes, not of excluding those others, but of excluding those which were not of the Company and which were from Essequibo itself; and therefore whatever exclusion that might have meant, it has no bearing whatever upon any territorial claims or upon any question as to the right of others to go there. Hence it seems to me that the proposition that is here made, is flatly a recognition of the fact that the French and the others had a right to go there and that consequently when he proposed to go there for the purposes of trade he had no thought in his mind of establishing any claim to Barima and no thought in his mind that the Dutch Company was possessed of any territorial claim there. I do not know whether I have made myself clear.

Lord Justice Collins. — Yes, perfectly.

Lord Russell. — This is 214 years ago —

Mr Mallet-Prevost. — But this is the first time that the subject was mentioned.

Lord Russell. — Is not it the history of nearly all acquisitions (there may be some modern exceptions) that they begin by persons going to make small efforts of trading, perhaps not saying to themselves in terms —

“ I am coming here to claim the dominion of this place for myself or for the State I represent — ”

but the thing grows up insensibly, insensibly, and insensibly, until you have a tangible state of things in which something like a settlement and something like settled society in a gradual and almost imperceptible way grows up, but finally exists? Is not that the real history of all this? I did not mean to lay too much emphasis on the fact that it was 214 years ago, but it seems to me that one ought to look rather back from the present than from the past forward to the existing state of things.

Mr Mallet-Prevost. — Undoubtedly. If the history of this region were a history of Dutch trade, and of exclusive Dutch trade; if this were a beginning and if it had continued right along, it would be incumbent upon me to discuss that point, and I say with all respect to establish what I think should be established that it would not be sufficient to give any territorial rights. But my Lord, it is beside the question to discuss that, because there are no facts which can be alleged as a basis for such a contention. I have gone through the history of trade in this region, and I have shown that it amounted to nothing, and I am now putting this forward simply to throw light upon what was the Dutch idea at the time with regard to territorial rights. It has nothing to do with the founda-

tion of title. The trade was not as a matter of fact established at that time. It was not continued. This proposition was not approved; the postholder that it was suggested should go there, did not go there. The Dutch were completely excluded from there, and hence it is quite beside the question to discuss what would have been the result if the facts had been different from what they actually were.

Mr Justice Brewer. — May I interject a word right there? While looking at the language, I am not sure that my learned brother Collins has not got the idea rightly of what was in Beekman's mind. I gather that your argument is that while the thought might have been at one time or another on the part of the Governors of Essequibo or others it was a thought which was not carried into execution and that this which has been put into the record simply shows what was in their minds from time to time, which was unaccomplished by any subsequent acts?

Mr Mallet-Prevost. — I go further than that, Mr Justice Brewer. I say not only that it was not carried out, but I also say that the thought was not there at the time, — that there was no thought in Beekman's mind at the time when he made that statement that the Company had any territorial rights as against Spain or as against the French or as against anybody else.

Lord Justice Collins. — I was just going to put that to you. If we want to strip this thing of all accidental circumstances, and look at the thing as at the time that it took place, first I suggest that the idea in Beekman's mind is that this is a trade that is worth acquiring for the Company, so far as his powers enabled him to take it exclusively for the Company?

Mr Mallet-Prevost. — Yes.

Lord Justice Collins. — You point out that those powers might not give him the right to exclude persons who were not subject to the provisions of the Charter. But is not there underlying the whole of it this idea, that that is a place that he and others may go to just as they like, entirely irrespective of Spain's voice in the matter? We are dealing with the process of evolution.

Mr Mallet-Prevost. — Yes.

Lord Justice Collins. — Here is the first step. I go and trade at a place where there is nobody to prevent me trading. As far as in me lies, I appropriate that trade for the benefit of my master, putting into effect all the powers that they have given me to exclude as many as I can. Then it may be, or it may not be that in the course of history that beginning has developed into something which passes from mere trade occupation into actual control. That is an after-thought.

Mr Mallet-Prevost. — Yes. Does your Lordship recall the passages which I read yesterday or the day before in connection with the Dutch trade?

Lord Justice Collins. — Yes; I have those in mind. As Mr Justice Brewer has pointed out, you have the second answer; that whatever their desire was, they did not accomplish it.

Mr Mallet-Prevost. — No; I am not going on to the subsequent history. I am trying to follow your Lordship's thought, and in that connection I ask your Lordship if you remember the passages I read where the Orinoco trade was first referred to, when the Company suggested that that trade be fostered with the Orinoco and with Trinidad, and that it be kept secret as much as possible, so that it could be kept as something for the Company. Now my suggestion is that that thought of the Company to go and trade in the Orinoco, to go and trade in Trinidad and to keep it as the exclusive trade of the Company as against others than Spaniards, if it could be kept, was exactly the same thought that was in Beekman's mind in the year 1684, when he suggested that they should go to the Barima and trade there. It had nothing to do with territorial rights.

Lord Justice Collins. — I only just want to point out this as it arises. There is this element of difference, that trading with the Spaniards could only be done with the assent of the Spaniards. Trading with persons who were not Spaniards but who were living at Barima might or might not be done, according to his view, entirely without regard to the Spaniards. There is that element of difference. It may be as you say.

Chief Justice Fuller. — Let me ask you this : Biscop was from Surinam?

Mr Mallet-Prevost. — Yes; from Surinam.

Chief Justice Fuller. — Did the Company exercise any control over Biscop?

Mr Mallet-Prevost. — None whatever in 1684.

Chief Justice Fuller. — Now this passage refers to Gabriel Biscop and other interlopers from Surinam who spoil that trade, and traverse and overrun the land. In order to somewhat check this —

Mr Mallet-Prevost. — To compete with them.

Chief Justice Fuller. — “ To check this ”, is the translation.

Mr Mallet-Prevost. — Yes.

Chief Justice Fuller. —

“ In order to check this, I have caused a small station to be made in Barima, and Abraham Baudaart, who is there as Postholder in place of Daniel Galle, who is going home, shall occasionally visit those places, ”

and so forth; and then he says it would not be inequitable for the Company to take that into possession. It seems to me that Biscop and these interlopers —

Lord Russell. — There does not seem to have been any suggestion of any traders from Spain or any Spanish traders in the Barima at this time.

Mr Mallet-Prevost. — There is the suggestion of French there, and there is no suggestion that the French be excluded.

Lord Justice Collins. — The trade was with the natives?

Mr Mallet-Prevost. — Yes; but there were others trading there.

Lord Justice Collins. — Certainly.

Chief Justice Fuller. — And he says that the copaiba and curcai are

much bought up by the Spaniards. By the way you find this letter on page 186 of the first volume of the Appendix to the British Case, and there is a difference in the translation between your quotation on page 45 in this particular.

“ And should establish there a permanent outliershship ”.

In the British Appendix it is —

“ and to command the erection there of a permanent place for a Postholder ”

I call your attention to that.

Mr Mallet-Prevost. — Yes; I think it is very important, and at page 186 of the first volume of the Appendix to the British Case, to which your Honour has been good enough to call attention, it does show that the Spaniards were trading. —

“ The copaiba and curcai are much bought up by the Spaniards ”.

Lord Justice Collins. — It is a trade with the natives carried on by all sorts of different people who had access to the place.

Mr Mallet-Prevost. — Yes, but there is not any suggestion — I do not know whether I have made myself clear, — of any purpose to exclude other nations from there.

Lord Russell. — No.

Mr Mallet-Prevost. — It is purely a purpose to go there and trade, and if that had been followed up by other acts, the meaning of it might be different. But as it is it seems to me that to read into it a territorial claim is to read into it something which is a forced construction.

Lord Russell. — I do not think anybody reads into it a territorial claim. It is ridiculous to suggest it, in my mind.

Mr Mallet-Prevost. — The second reference to this region is in the year 1732, when we have the incident of the Swedes. It is not necessary for me to go through that evidence, but you will remember that the passages are in the second volume of the British Case Appendix at pages 18 and 19. At page 18, the Dutch Commandeur writes to the Company speaking about the possibility of the Swedes coming to Barima and tells the Company that he has heard that the Spaniards have transferred or are about to transfer Barima to the Elector of Bavaria, and then comes the answer of the Company without the slightest reference to Barima, and I point not only to those passages, but I point to the whole conduct of the two Governments with regard to the Barima in connection with that Swedish incident to show that the Spaniards on the one hand regarded that as their territory and on the other hand that the Dutch entirely ignored the question as some thing that had nothing to do with them. When I say, by the Dutch, I mean by the Dutch Company when the matter was brought to their knowledge.

Mr Justice Brewer. — That is in the year 1732?

Mr Mallet-Prevost. — Yes, your Honour.

Mr Justice Brewer. — Do I understand you to say that those two references are all that there is in the record as to any suggestion or claim or movement of the Dutch into the Barima territory up to that time?

Mr Mallet-Prevost. — Up to that time, the only two.

The third one is in 1737, the second volume of the Appendix to the British Case, page 25 B; this is a statement by the Commandeur and no doubt it is the same one who was there during the Swedish incident.

“ The Post of Wacquepo and Moruka, formerly the most important trading place for the Company’s annatto trade, has these last few years considerably fallen off in this business. ”

I read that because it is a most important statement with regard to frontiers. It is a brief one and I think it is worth while repeating it:

“ And though I see no way of remedying this, we ought, nevertheless, to keep up this Post, because it was established for the maintenance of your Honours’ frontiers stretching toward the Orinoco. ”

That is the suggestion that we have in this period prior to Storm van ’s Gravesande, and it is the last suggestion that we have from Dutch sources as to where the boundary ought to be, and it is clear from the language which is here used that in 1737 the Dutch Commandeur was looking upon the Moruca Post as the boundary of the colony in the direction of the Orinoco.

Lord Russell. — Now is that so? We discussed this days and days ago.

Mr Mallet-Prevost. — Yes.

Lord Russell. — Frontiers stretching towards the Orinoco. You are quite entitled to say that that would seem to point out the frontier is before reaching the Orinoco, but to say it is bounded by the Moruca is another thing.

The President. — We discussed this.

Mr Mallet-Prevost. — I called your Lordship’s attention to great numbers of passages in connection with the Moruca post, this and many other letters which all point to the same fact, that as a practical matter that point was treated as the frontier, and it is here referred to in a way which carries no suggestion that the Dutch territory went beyond that.

Chief Justice Fuller. — You interpret that to be it was established for maintenance of the frontier of your Honours’ which stretches —

Mr Mallet-Prevost. — Yes; and what frontier is it? He might have described it as the north-west frontier of the colony; he describes it as he properly does as the frontier stretching in the direction of the Orinoco. He is speaking of that frontier as the frontier of the colony from Esse-

quiibo in the direction of the Orinoco and there is the frontier and that post is put there for the maintenance of that frontier.

Mr Justice Brewer. — This was nearly one hundred years after the Treaty of Münster.

Mr Mallet-Prevost. — Yes; 1737. There is nothing further till the time of van 'sGravesande and the next suggestion that we have is in the year 1746, and I want to make this statement, I think it is an important one. The attitude of van 'sGravesande with regard to territorial claims may distinctly be divided into two parts; the first, his ideas, such as they were, prior to his discovery of the D'Anville map to which he first alludes in the year 1758. That map seems to have had undoubtedly a very controlling effect upon his subsequent notions and therefore it is necessary to distinguish between the boundary before that and after that.

Mr Justice Brewer. — What is the date of that map?

Mr Mallet-Prevost. — The map itself was 1748 but it does not appear to have come to his knowledge till 1758, ten years later. That is the first reference that there is to it. The incident to which I referred yesterday — the subject of the Caribs in Waini and which I show had reference to the Akawaini, a branch of the Pomeroon and not to the other, is important in view of the answer made by the Company to the Dutch Governor, and that answer will be found in the second volume of the Appendix to the British Case at page 46 and goes once more to prove —

Lord Russell. — It is this the reference relating to 1746?

Mr Mallet-Prevost. — Yes; and goes once more to prove that the Wacupo and Moruca were regarded still by the Company as the limit of its territory. This is the Company's answer to the formal letter, which is on page 45, from the Commandeur speaking of the attack that had been made "upon the Caribs subject to us in the River Waini," and which showed yesterday had reference to the Akawaini:

"Upon receiving your letter of July 20 of this year we without delay inquired about the departure of the ship "de Jalousie," skipper Rœlof of Heysingh, the bearer of this missive, and, understanding that she had not yet sailed, we did not wish to fail to send you this missive, and thereby briefly to say that you will do well by driving away again out of the Wacuepo and Moruka" —

no reference to the Waini as anything in which the Company had any interest —

the Indian nation which came down from far up in the Orinoco, and tear down what you find they have made there, and thus maintain the Company's territory, especially if you think you have reason for suspecting that this nation meant to undertake something which might tend to the disadvantage of the Company or of the Colony in Essequibo."

Lord Russell. — See how unreliable these accounts on the one side and the other, probably on both, are. Three years before that the Marquis de Terrenueva on page 41 of the same volume, says : —

“ And in view of the fact that the Dutch are established within this demarcation and limits, on the continent of the Province of Guayana, and occupy with their cities and mills, the territory which stretches from the Orinoco to the beforementioned Surinam. ”

Mr Mallet-Prevost. — I considered that passage the other day and showed it has no foundation in fact. I am now dealing with what the Dutch thought.

Lord Russell. — Yes, but it is for both sides.

Mr Mallet-Prevost. — I want to set forth what claims the Dutch made and what claims the Dutch made had nothing to do with what the Spanish thought.

Lord Russell. — No, but it has an important bearing on what the Spanish thought the position of the Dutch.

Mr Justice Brewer. — They locate $318^{\circ} 1/2$ as the longitude.

Mr Mallet-Prevost. — Yes, I discussed that in connection with the extent of settlement and I think it was a document that contained one of those phrases that has been made use of over and over again by my learned friends on the other side, because it is the only evidence they can bring forward to prove any sort of Dutch occupation. When these are cited it does not mean there is any Dutch occupation up to the mouth of the Orinoco; because I have shown that, not in the documents themselves nor in any contemporaneous documents was it recognised that the Dutch were west of the Moruca; and on page 41, to which you referred, allusion is made to D'Lisle's map which was referred to the other day and shows exactly what the writer meant.

In the year 1748 there is a letter from Storm van 'sGravesande which is important, at page 57 of this 2^d volume of the Appendix to the British Case :

“ The Spaniards were beginning to gradually approach the Upper Cuyuni, but some weeks ago a war having broken out between the Carib nation and that of the Warows, which is carried on very obstinately, it will stop their further progress, and possibly, if the Caribs obtain the upper hand, they may even be driven somewhat further off, without our having in the least degree to meddle therewith. I wish, however, that if it were possible, I might know the proper boundaries. ”

This is the first of a great many passages I might cite to some of which I shall have to call attention when I come to deal with the history of the interior which go to prove that at this time Gravesande was utterly ignorant of the boundaries of the colony and was seeking information on that point.

Lord Russell. — That is quite clear. There are passages in which the says.

“ I do not know what the limits are of the colony. ”

He says so more than once.

Mr Mallet-Prevost. — Yes.

According to the testimony of old men and of the Indians, this jurisdiction should begin on the east at the Creek Abary, and extend westwards as far as the River Barima, where in old times a Post existed; but these sayings give not the slightest certainty. ”

This is the statement of Gravesande before the map of D’Anville came to his notice and it is important to mark what he has to say with regard to the knowledge that was available there at that time and with the basis upon which he refers to the Barima as something that was possibly belonging to the Company. I should correct myself. He does not refer to the Barima as something that might belong to the Company, but he refers to the fact that the territory might go as far as the Barima and I shall point out later Gravesande never went beyond that claim.

Lord Justice Collins. — At that time did not D’Anville treat the Amacura as the Barima?

Mr Mallet-Prevost. — No; he never did. Your Lordship means placing one as the other?

Lord Justice Collins. — Yes.

Mr Mallet-Prevost. — He did. I did not understand your Lordship’s question.

Lord Justice Collins. — When he refers to Barima, if he has D’Anville’s map, it may be he shared the same error.

Mr Mallet-Prevost. — He had not D’Anville’s map yet, and I want to get at Gravesande’s idea before the map came under his eyes.

Sir Richard Webster. — Gravesande put Barima, before the Amacura.

Mr Mallet-Prevost. — So did every Dutch map.

Lord Russell. — Then that suggests what Lord Justice Collins says is correct. When speaking of the Barima he meant the Amacura.

Mr Mallet-Prevost. — I am coming to D’Anville’s map in one moment. I want to make this plain. In 1748 before the D’Anville map came under the notice of Gravesande he was saying in the first place :

“ I do not know where the boundary goes. ”

In the second place, he says :

“ According to the testimony of old men and of the Indians this jurisdiction should begin on the east at the Creek Abary, and extend westwards as far as the River Barima. ”

Now will you please notice the phraseology. It is phraseology repeated over and over again in subsequent documents; “ as far as the River

Barima. " For the moment let me brush any distinction aside between Barima and Amacura. I shall not lose sight of that. He says, according to this testimony of Indians, they might extend as far as that.

Sir Richard Webster. — No, " should " extend, not " might " extend.

Mr Mallet-Prevost. — Well " should " extend, and Why? " As far as the river Barima where in old times a post existed. " We know today what the history of that affair was. He is referring to the same shelter suggested by Beekman to be erected there in 1683 and which suggestion was never carried out.

Lord Russell. — If this is a true account there must have been something or other, perhaps not very important, but still something.

Mr Mallet Prevost. — I deny that most emphatically. I point out this was a commercial company. Everything its agents did was recorded, however minute it might be, and it is impossible to assume there was any authorized Dutch post in Barima; and it is not in the records.

Lord Russell. — Perhaps it is not a post but a shelter.

Mr Mallet-Prevost. — That is the position I take. He referred to that shelter in 1683.

Lord Russell. — And the Indian tradition was that that was coupled with occupation by the Dutch.

Mr Mallet-Prevost. — That explains the tradition but does not go very far to show Dutch occupation. After a Dutchman went and passed a season in that shelter or part of it or treated with the Indians and gave them rum and other articles and that tradition went down for years the Indians might think it was a Dutch occupation. We know now it was not. I submit it is impossible to construe that into a Dutch occupation, but it does explain the tradition that came down, and it was on those traditions and nothing else that Gravesand at this time refers to the extent of the company's territory westward as far as the Barima and then he himself goes on to say in the last words which I have not read, but which are very important,

" but these sayings give not the slightest certainty. "

There was the Dutch Governor in 1748 close to the time when this happened and in a position on the ground to get all the information there was as to that. We see his desire to get information. He had the records there fuller than we have them today, if possible, because he had records that have not been printed here and yet with this assistance he says :

" these sayings give not the slightest certainty. "

It is on that and on that alone he says the Company may go, not beyond, but as far as the Barima. Before I come to the change in Gravesande's mind, which came over him by reason of the d'Anville map, I want to refer to one more incident, the " Baskensburg " incident in 1749.

That was a vessel that was wrecked about Peche, a place shown on Bouch-enroeder's map. It is impossible to locate it but I should say it is there midway between the Moruca and the Waini (pointing it out).

The President. — We had some extracts by the consent of both parties.

Mr Mallet-Prevost. — Yes, these are documents referred to by the Attorney General in his opening and which he has submitted to the Tribunal in connection with this.

The President. — With the consent of both parties?

Mr Mallet-Prevost. — Yes; I am very glad to have the opportunity of referring to them. Our statement as to this matter at pages 338 and 339 of our Printed Argument is entirely correct. I say it is entirely correct because we state that this question was submitted to leading jurists in Holland and they gave an opinion thereon. At the time we made that statement we were unaware that that opinion was an opinion that was asked for and given in consequence of proceedings which had taken place theretofore, but the history of those proceedings in no way vitiates or alters the statements that we made in our argument and I propose now to show that by reference to these extracts which have been printed by Her Majesty's Government. I read from these extracts. We have the first — the letter of the Commandeur in Essequibo of November 9, 1744.

Lord Russell. — Expressing my own individual opinion — it has been introduced and must be discussed — but it does not seem to be worth discussion; an opinion upon a state of facts we do not know, an opinion expressed by some legal authority 150 years ago.

Sir Richard Webster. — There is no statement as to the facts, not the slightest.

Mr Mallet-Prevost. — There are some statements here. The Attorney General had an opportunity to discuss this matter and did not do it.

Sir Richard Webster. — I beg your pardon. You asked me to postpone it till you had had an opportunity of seeing the papers.

Mr Mallet-Prevost. — And we had the papers the next day.

Sir Richard Webster. — No, not till my speech was finished.

Lord Russell. — I suppose it must be discussed.

Mr Mallet-Prevost. — Yes, because it shows Gravesande's attitude of mind before he saw the d'Anville map. This was in 1749.

Chief Justice Fuller. — 1744.

Mr Mallet-Prevost. — The final opinion was in 1749. The papers begin in 1744.

Lord Russell. — Spanish proceedings are very rapid.

Chief Justice Fuller. — This is Dutch proceedings.

Lord Russell. — Imitating their neighbours.

Mr Mallet-Prevost. —

“ I have the honour also to inform your Lordships that the Flushing vessel, the “ Baskensburg ” bound from the coast of

Guinea with a cargo of slaves for Surinam, has stranded just below your Lordships' trading place in Moruka; "

Now I call attention to two things there. In the first place to the description; it was —

"just below your Lordships' trading place in Moruka".

Lord Justice Collins. — Just below means a little further away.

Mr Mallet-Prevost. — Now the statement of facts is more fully set forth on page 2. Without reading the whole of that letter I read from the second paragraph. This "Baskensburg" had run aground there and had been abandoned by the owners and notice of that fact was brought to the notice of Gravesande; some of the colonists sent off two men to catch the slaves for it was a slaving vessel. This is what happened :

"The slaves being on shore, I took good care to have them placed in safe keeping until such time as notice of their sale could be given throughout the whole Colony; this occasioned great difficulty, being so badly provided with dwellings. The Ensign Commandant had his work cut out here, for to keep 200 slaves together for nine days, and to see that none get away is no easy matter.

"Thereupon I received news from the pilot Willemse that he had boarded the ship between Camoeni and Peche, about 15 Dutch miles below the Post in Moroco, that everything there had been broken to pieces, the doors and cupboards of the cabin and all chests broken open, all the wainscoting and the cordage cut down, the sails torn down or cut down, in a word, all in a desolate state, and that he should remain on board until further orders. This report having been considered in the Council, it was resolved to commission Mr Ab. van der Cruysse and the English Captains Humpbreys and Wanton (upon the refusal of Matthijs Park) to make an ocular inspection and to decide according to the report of those gentlemen what was to be done. The aforesaid Commissioners upon their return made a report that they had found the ship as mentioned above, sunk deep in the mud and sand; that it would perhaps not be an impossibility to get it off, but that it was very uncertain whether, when it got afloat, the leakage would not be so great as to be irreparable; that, in addition to this, the costs would be so great since in any case it would have to be furnished with new cordage and many sails, and since the carpentering, which would have to be done on account of the whole deck being broken would cause all this to run up so high that the ship, even if it were sold at a high price (which was not to be expected here), would not be able to make good the costs by a long way, or even by a half — "

Lord Russell. — What is known as a constructive total loss in marine law.

Mr Mallet-Prevost. — Yes; and I call the attention of the Tribunal to the following words which are very significant :

“ and in addition to this the danger of lying so close to the Spaniards being considered — ”

showing that van's Gravesande regarded the territory in which this took place as close to where the Spaniards were —

“ it was resolved to break up the aforesaid ship, and to take from it everything that could be of any value, and to turn it into money, which was also done, and yet the costs ran up nearly as high as the ship brought in.

“ I have the honour to send your Honours herewith the accounts of the aforesaid vessel and slaves the balance of the cash lying here at the disposal of your Honours' orders. In these accounts your Honours will find the claim of Mr Dudonjon — ”

he was one of the planters who first had notice of this matter —

“ who demands a just third of the nett proceeds, and has also laid an embargo upon the same. I have been unwilling to pay this before I have reported it to your Honours and have received a reply; that man took great trouble to secure the slaves who were on shore and armed, as they still had arms in their hands, on arriving at the fort he risked not only his boats, but his white servants and many of his best slaves, since for this work the most trustworthy and most courageous were required. One of his best Indians was shot dead by them, and had not the second Bomba and a slave of the aforesaid Dudonjon, who was of their country, set them down and enticed them into the boats with good words and promises, not only would all his people have been dispatched, but the slaves too would have been lost, and very few have come to hand again.

“ The Governor of Berbice and several letters from Surinam assure me that I too am entitled to a third part since the ship was quite abandoned, and must be considered as treasure-trove.

I take the liberty of placing my interests in the hands of your Honours, as my fathers and masters, and shall act precisely as your Honours think proper, being perfectly convinced that your Honours will see that I get what is my due, according to justice and reason, and that I should not wish to receive what is not justly my due.

I have taken every trouble and put forth every possible endeavour for the slaves and goods of that ship in order that nothing might be misappropriated, and that everything might

come right. Nor do I think that anything was wanting, which can be proved from the unanimous accounts of the slaves, whom I have had separately examined by good interpreters."

And then follows an account showing what monies were expended and what realized. There was another claim put in by a person named Paulus de Bary on page 4 claiming he had been the first to discover this and had given notice to Dudonjon and the matter was sent for determination to the Company itself. At page 5 there is another statement (in the first paragraph) where this "Baskensburg" was lying between Peche and Waini. Then at the bottom of page 7 Gravesande explains one item in the account he sent, No. 6, which is at the top of the page :

"To the accountant for management, etc. 5598 florins"

and in explanation of that item Gravesande says :

"It is to myself for management and extra trouble, etc., having had to look after everything, give the necessary orders",

and so on and so on; and then the Company, as apparently arbitrators in this matter made a decision which was not satisfactory either to Dudonjon or to Bary and Bary makes a protest at the middle of page 9 where he says :

"He had this day been informed by his Honour the Commander, Mr Laurens Storm van's Gravesande, of the decision pronounced on the 31st day of January of this year by the Honourable Directors of the General Chartered West India Company in the Zeeland Chamber as Arbitrators in the matter of the stranded and abandoned vessel "Baskensburg",

and then comes at the end of the page the statement which Gravesande had to make to the Company. Gravesande was not allowed the third which he thought himself entitled to and this is what he says in answer :

"I have communicated the decision of your Honours as Arbitrators to all those interested therein. Paulus de Bary has protested against it, and given notice of an appeal to their High Mightinesses. Mr Councillor van der Cruysse has declared that he cannot abide by the same, and that since it was I who commissioned him he also looked to me for the payment, which he would demand from me by legal means even if it should cost him twice as much. Mr Councillor C. Boter also refuses absolutely to abate a cent of his demands, and maintains that his account was a very reasonable one. So that I am in great difficulty about those matters."

Sir Richard Webster. — Not uncommon in salvage cases if you have had much to do with them.

Mr Mallet-Prevost. —

“ By the ‘Juffrouw Margareta’ I had received a copy of the very derisive answer of the owners of the vessel ‘Baskensburg’ to the accounts sent over, and sent my answer to the same addressed to Mr M. Spoors by the same vessel, and could have wished that your Honours had seen the same before the decision. ”

Lord Russell. — I suppose this vessel was not underwritten.

Sir Richard Webster. — It does not appear. —

Mr Mallet-Prevost. — No, it does not appear, probably not :

“ I have no doubt that your Honours would have taken it into consideration and arranged the matter differently.

“ Having placed my interests in this matter in your Honours’ hands, and resigned myself to your Honours’ decision, there is nothing left for me but to thank your Honours for the trouble which your Honours have been pleased to take in this matter with regard to myself. But may I be permitted, and I trust your Honours will not take it amiss that I take the liberty, to say that, having looked forward to enjoying some reward for my trouble and indefatigable zeal and industry exercised by me in order that the owners should not be cheated as they certainly would have been, I now find myself actually a loser for having been obliged to pay at that time 4d. for every 1b. of cod and 15 to 20 guilders for every cask of cassava bread in addition to the bananas, yams, kiltum, &c. I have the honour to assure your Honours that the 1000 f. which the owners accord me in their letter under the appellation of a *douceur*, and which is confirmed by your Honours’ decision, is with the 5 pence per day for each slave insufficient to cover the expenses which I have actually had to pay. If I may have the honour to remind your Honours that in the year 1738 your Honours wrote to the Council asking them to recover from a certain, ”

Lord Russell. — Is this important ?

Mr Mallet-Prevost. — I think it is, because it shows what action Gravesande took. I am nearly through with this but I want to clear it up once for all, my Lord :

“ Maria la Fond resident here a sum of money which the Governor of Surinam demanded from her in respect of some of her black slaves — ”

and so on. Now in September 1749 he says :

“ I have communicated to the Secretary the article concerning the ship ‘Baskensburg’ ”.

“ The persons who consider themselves aggrieved by the decision of the Arbitrators persist in their determination to appeal from it to their High Mightinesses. I believe, but cannot say with certainty, that the necessary steps have already been taken. ”

“ Your Honours are pleased to say we have only ourselves to blame — ”

and then he goes on to say he had given all the information that was possible.

“ Concerning myself, I have submitted to your Honours’ decision and have much, too much respect and esteem for your Honours to wish to appeal against or have revised any Judgment pronounced by you; that is by no means my intention, but am quite determined to continue my submission to your Honours, and shall let the matter rest there.

“ But out of curiosity I sent this case over and asked the opinion of the most eminent jurists in the Province of Holland upon it, which I have received by “ De Vriendschap ”, from which I see that I had not formed any wrong idea, and have good hopes of succeeding if I wished to push this further, which I shall take good care not to do.

“ At the close of the aforesaid opinion I was surprised to see that it was supposed that the owners of the “ Baskensburg ” had treated me most ungratefully, because I had staked my honour, reputation, and possessions in their behalf, because that ship was stranded at Pechy, and thus on the territory of Spain, and I had no right to touch the same. For this I was quite unprepared, and shall be somewhat more careful in future.”

Mr Justice Brewer. — Who were the leading jurists of Holland?

Mr Mallet-Prevost. — He does not mention them.

Chief Justice Fuller. — Bynkershoek was alive then.

Lord Russell. — But surely for a salvage operation which this really was, the question of where the ship was stranded was immaterial.

Mr Mallet-Prevost. — It might be, but when he sought an opinion on it. —

Sir Richard Webster. — The opinion was on his one third of persons who really did not know as much about the question as we do sitting here.

Lord Russell. — And the opinion?

Mr Mallet-Prevost. — It was an opinion which it seems to me very important to consider in connection with Dutch claims at the time. It is in that connection that I present it. I do not present it as an opinion which should in any way determine the action of this Tribunal as to where the line is, but I do present it for this purpose, viz. to show that in 1749 the question was submitted to the most eminent jurists of Holland and they

said Peche was on Spanish territory and Gravesande accepted that and said he would be more careful after that.

Lord Russell. — If they deserved that appellation of distinguished jurists of Holland it was an extraordinary opinion to have given, does not it strike you?

Mr Mallet-Prevost. — No; I think they are right and it was on Spanish territory.

Lord Russell. — If it was a salvage operation.

Mr Mallet-Prevost. — I thought your Lordship referred to the decision it was Spanish territory.

Lord Russell. — No; not at all, this is a question of adjustment of salvage claim, one saying I did it, and another I did, and a third I did it.

Mr Mallet-Prevost. — I do not care if it was right or not, but I do care for this, that the opinion was right, that they thought it was right and Gravesande accepted it, and we are to take it as a question of the belief of the Dutch at that time that that was Spanish territory and that is the view I present, and for that purpose it is perfectly good, no matter how irrelevant it might have been in connection with the "Baskensburg" incident itself.

The President. — May I draw your attention to this about this place at first:

“ That the Flushing vessel the “ Baskensburg ” bound from the coast of Guinea with a cargo of slaves for Surinam has stranded just below your Lordships’ trading place in Moruka. ”

At page 10 which you have read just now they said it was stranded at Pechy. At page 6 as follows :

“ That I, Paul Chartier de La Verdoniere, departed on the 23rd September, 1744, from the plantation de Goede Hoop with my own canoe and victuals in search of the ship named “ Baskensburg ”, which I discovered to be stranded between Essequibo and Orinoco at the place called Simoeina. ”

What is that, is it a different place or the same place?

Mr Mallet-Prevost. — I do not know where Simoeina was, I do know where the Gulf of Peche was, it appears in a map of Bouchenroeder.

Sir Richard Webster. — At page 2 it was stated to be fifteen Dutch miles below the post of Moruca that is sixty miles away.

The President. — One time it is called Peche and another Simoeina.

Mr Mallet-Prevost. — That may have been another name for the same place, I know of no map where Simoeina appears.

The President. — It may be the Dutch lawyers had no fixed idea of place itself.

Mr Mallet-Prevost. — They would hardly give an opinion if they had no idea. They must have had some idea from Gravesande.

The President. — I want to know if Peche and Simoeina is the same place?

Mr Mallet-Prevost. — It may have been; we know it was Peche because he says so by name, and at map No. 46 of the Venezuelan Atlas the Gulf of Peche is marked as an inlet in the coast between the Moruca and Waini. Whether there is any place there to-day that bears that name or not I do not know.

It does not appear on the maps today. There was no question it was between Moruca and Waini and from that map of Bouchenroeder's it is between those points and that was referred to as Spanish territory.

Sir Richard Webster. — There is no doubt about the position. Mr Mallet-Prevost is right. It is 60 miles below Moruca, in the direction of the Waini.

Mr Mallet-Prevost. — I do not know about 60 miles.

Sir Richard Webster. — It says so in the document.

Mr Mallet-Prevost. — Then let the document speak for itself.

Lord Justice Collins. — If you have the Dutch there of that document I should like to look at it out of curiosity.

Lord Russell. — You are entitled to say for what it is worth there is a statement by some people in Holland, who did or did not know but said, that Peche was in Spanish territory and that statement is made to Gravesand and he does not deny it.

Mr Mallet-Prevost. — A little more than does not deny it. He accepts it and says he will act upon it, and that is a statement at that time of what is the Spanish territory. It is an admission.

Lord Russell. — What is the weight to be given to it?

Mr Mallet-Prevost. — I present it simply as something showing the Dutch idea of boundary and as I am presenting the point of what the Dutch believed to be theirs, it is very material to that discussion and it is very material for this reason: that after this date Gravesande adopted the say-so of a map maker, d'Anville, which was thereafter adopted by the Company itself and the whole thing was rested on d'Anville's authority and I come now to that point. The first mention of d'Anville's map is to be found in the 2nd volume of the Appendix to the British Case.

Lord Russell. — I forget the date of that map.

Mr Mallet-Prevost. — It was 1748, I think, the first edition, and 1760 the 2nd edition. I am now going to point to the earliest notice of this map that Gravesande appears to have had and it is page 144.

Sir Richard Webster. — D'Anville's map was published in 1748, I think you will find.

Mr Mallet-Prevost. — The main discussion — I might say the whole discussion — that arose about the year 1758 and was continued for some time after that year as to where the Dutch boundary was, was a discussion that was due to the action of the Spaniards in the interior; and when I come to deal with the history of that interior and the Spanish attack

upon the Dutch Cuyuni post in 1758 a great many facts will come out that bear on this question, and go to explain the total ignorance both of d'Anville and the Company about boundaries till the map of d'Anville came under their notice. I do not refer to those because it would involve a repetition. I want to make clear before I leave this coast what the claims were (leaving possibly the discussion of some of the questions as regards the interior) the reason of those claims and what Gravesande alleged as the basis of their support. I do not want to discuss now the theory of the claims but rather what the extent of the claims was. At page 144 C is an extract I shall read. It is the first mention by Gravesande of this map :

“ It is my opinion that this river is of the greatest importance to your Lordships, much more so than any one of the others; ”

he is referring here to the River Cuyuni in connection with which this whole discussion arises :

“ It is my opinion that this river is of the greatest importance to your Lordships, much more so than any one of the others, and also that it is perfectly certain and indisputable that they have not the slightest claim to it. If Your Lordships will be pleased to look at the map of this country, drawn by Mr d'Anville with the utmost care, your Lordships will clearly see that this is so. Our boundaries, too, are defined in a way which proves that the compiler was very well informed. ”

When I come to discuss the basis d'Anville may have had I think it will show he could have had no real knowledge of the matter, for the Company and Gravesande were both exhausting themselves for information. They were the ones in whose hands the information was, if it was to be gotten; and d'Anville made a map and drew a line which he (Gravesande) cited for the Dutch to adopt, and they grabbed at it and held on to it for a number of years, as long as they could, without attempting in any way to justify the line itself.

Now the first edition of this map was published in 1748, and the second edition in 1760. There was some slight difference in the interior with which we have nothing to do at present but the map of 1760 is more detailed and I shall ask the Tribunal to turn to it. It is practically the same. It is in the Venezuelan atlas, No. 40. It was a map of South America. The full map appears at page 39. The Tribunal might glance at that, to see that this region was a small detail in a very large map. Map 39 in the Venezuelan Atlas is a map of the whole of South America and map 40 is a portion of this map which has been reproduced in this way, so the details can be more clearly seen. I ask Your Lordships to look at this line and see just what it embraces. It leaves the Waini on the Dutch side. It leaves the whole of the Amacura and the

Barima on the Spanish side. The Amacura is wrongly placed but it is not wrongly placed in the sense that Gravesande would regard the Amacura as being a river nearer to him than the Barima and it is just at that point that my learned friend, the Attorney General, has fallen into great error. The Barima comes right up to the line. The Barima is the main river. The Amacura is given as a little rivulet which goes into the sea about Point Barima, but the Barima is the main river which lies next the Waini and the boundary line goes up to the Barima.

In other words I should think it impossible, of course on the modern geography with the rivers correctly placed, to entirely reproduce the d'Anville line which was a straight line but it was a line which came to this Barima river and somewhere between that and Barima Point there was a small river that went down there and that was the Amacura but the Barima was the river that came near the Dutch line and therefore Gravesande was not confusing those two rivers when he says "our line goes as far as the Barima." He was speaking of the real Barima, though the rivers are wrongly placed. The Amacura was of no importance. It was not reached before reaching the Barima. It did not lie between the Barima and Waini except where it emptied its waters into the mouth of the Orinoco or the ocean. It is given here as partly the other. Hence it is a mistake to assume the use of the word Barima by Gravesande was a use that he made intending to indicate the Amacura.

Lord Russell. — Let me appreciate that. When speaking of it in that way you mean he was referring to the Barima not where it discharges itself into the sea, or Orinoco, whichever it is, but at some point inland.

Mr Mallet Prevost. — Precisely.

Sir Richard Webster. — Far inland.

Mr Mallet-Prevost. — How far inland I will show.

Sir Richard Webster. — 150 miles.

Mr Mallet-Prevost. — The Attorney General is much mistaken.

Sir Justice Brewer. — If you take this map of d'Anville this line touches the Barima on the southeast shore and then the Barima goes away to the northwest and the line runs straight to the ocean.

Mr Mallet Prevost. — It does.

Lord Russell. — If so, if that is the Barima, then it must be the boundary all along.

Mr Mallet-Prevost. — He does not make it the boundary all along. He allows the watershed of the Barima on the Spanish side. This statement of Gravesande is in the year 1758. A short time after that we have the incident of Van Rosen and Van Rosen was here at the Aruca and Gravesande spoke of it as on the other side of the Barima and that shows that Gravesande when he said Barima meant Barima.

Lord Russell. — It would be the other side of the Amacura.

Mr Mallet-Prevost. — Yes, but the Aruca was not a tributary of the Amacura and he spoke of this place, or the testimony did, as on the Aruca.

Sir Richard Webster. — Gravesande never spoke of it as on the Aruca.

Mr Mallet-Prevost. — He spoke of it as on the Barima and the testimony taken on the trial located it as *there* and Gravesande was *there*. This confusion as to Amacura and Barima in Gravesande's mind is this : he did not know of the existence of the Amacura. He thought it was a little stream *here* and that is shown on D'Anville's map.

Lord Russell. — Does it appear in d'Anville's map at all ?

Mr Mallet-Prevost. — No, but it appears in the testimony taken before Gravesande and in connection with the settlement on the Barima he speaks of it as being a settlement on the other side of the Barima.

Lord Justice Collins. — I do not think that argument will explain the view of Gravesande in the *passgae* you referred to first in 1748, which was the one that gave rise to the discussion as to whether he meant Barima or Amacura.

“ According to the testimony of old men and of the Indians this jurisdiction should begin on the east at the Creek Abary, and extend westwards as far as the River Barima, where in old times a post existed. ”

It is obvious there he is referring not to the inland river, but the point on the coast.

Mr Mallet-Prevost. — He did not know of that point.

Lord Justice Collins. — Yes, at that point of time we are dealing with what Gravesande meant by Barima. The suggestion is he may have meant Amacura.

Mr Mallet-Prevost. — That is impossible.

Lord Justice Collins. — Your present argument does not displace it, whether he may have got fresh information and altered his opinion does not matter, but it is obvious, in 1748, he refers not to the Barima inland but to its mouth at the sea, he is tracing the extent of jurisdiction along the coast.

Mr Mallet-Prevost. — I respectfully call attention to this; Gravesande in person never went there; he had his information from those that came.

Now those that came would go by these inland passages, they would strike first the Waini and then the Barima, so that the general talk of the Colony about Barima was the first river that was met with after passing the Waini, it could not have been anything else. There was this tradition of the Indians about a Post in Barima.

Lord Russell. — Going from Essequibo if the ship was of any size they must have gone by sea, and had favouring wind and tide and coasted all the way.

Mr Mallet-Prevost. — The great mass of the travel there would be in these small boats, and the general consensus of opinion and reputation of the matter in the Dutch Colony would of course be to the Barima as a river next to the Waini. There was no idea in Gravesande's mind

as to where on the Barima this ancient supposed post was located; all he knew was some place in the Barima. It is impossible to say at what point in that, Beekman in 1683 might have suggested the shelter should be erected. It is possible it was erected there, and nothing to prove it was erected where "Dutch Post Site" is put on this map. It would be naturally near the Dutch Colony at a point easily accessible. Wherever it was put Gravesande did not have any knowledge of its location. He knew there was a general tradition among the Indians there had been a Dutch Post in the Barima and couples that with the general reputation that the Barima lay next the Waini. He knew nothing of the Amacura, and when he says the boundary goes to the Barima, he does not mean to pass this river. He speaks of it as Spanish territory and that Van Rosen was arrested on our side, and did not dare to go the other side because it was Spanish territory. The point I am endeavoring to meet is that which your Lordship raised. Ten years before it would have been impossible for Gravesande to have been thinking of this river as the Barima; he must have been thinking of this river; there is no other. The confusion arose on the Dutch maps, not on the ground; it has been always called the Barima and the other the Amacura, there is nothing to suggest anything else; in all the Spanish maps they are properly placed, and the Dutch traders or Indians going through that would know it was the Barima River and speak of it as the Barima river and hence when Gravesande speaks of to "our boundary going as far as the Barima" he meant *that* Barima, and no other. That is shown on d'Anville's map.

Lord Russell. — Did he mean that at some point far inland, or did he mean where it discharges into the sea, or river?

Mr Mallet-Prevost. — It depends if you call that far inland or not.

Lord Russell. — It is obviously far inland from the mouth of the River. That would be 60 miles according to the measurements.

Mr Mallet-Prevost. — Yes, that would be the point touched naturally by the Dutch traders that might pass through there on their way to the Orinoco. Thus the Dutch traders would not touch *this* at all. They would go by the Waini and Barima and would have no knowledge of *this*. Now, I have endeavoured to meet the point made by Lord Justice Collins and I think the explanation is a very fair explanation to give of that and if I have not met it I would like your Lordship's criticism upon it.

Lord Justice Collins. — Up to a point it is an answer. After that it is not. There is the coast line. He takes a point on the coast to the right and takes a point on the coast to the left and he names it Barima. That is page 58 :

“ According to the testimony of old men and of the Indians this jurisdiction should begin on the east at the Creek Abary and extend westwards as far as the River Barima where in old times a post existed. ”

It seems to me there he is measuring along the coast.

Mr Mallet-Prevost. — I do not think that is necessarily so at all, my Lord. If the other explanation is sufficient to meet the facts and I think it does fully and honestly do so that he meant where it discharged itself into the sea or into the Orinoco River would be forcing a construction upon that that is not a necessary construction. I think the other meets the point. He did not know where the post had been. If there had been a post at the mouth of the Barima River — if Gravesande had known that fact and then if he had said our boundary goes up to *that* point, which was located upon, that would be a different thing, but no one knew where this shelter had been located if it was located anywhere.

Lord Justice Collins. — How did the Surinam rovers get to Barima? Through the Mora passage?

Mr Mallet-Prevost. — Probably.

Lord Justice Collins. — I should think they went by sea.

Lord Russell. — It would depend on the size of the boats.

Mr Mallet-Prevost. — Many of them went through the inside passage because it was a question as the Tribunal will remember of showing passes to go on.

Lord Justice Collins. — But these disreputable Surinam persons did not always show their passes. I was suggesting to you that that points to some place accessible by the mouth of the Orinoco which would be the place where those rovers were.

Mr Justice Brewer. — They could not go to Surinam from Essequibo and Moruca except by sea. There is no inland passage.

Mr Mallet-Prevost. — They would have to come by sea to the Essequibo, possibly to the mouth of the Pomeroon and through this inland stream but if they went the other way we must assume that the trade was at the Point and no trading in the interior at all. Does that answer your Lordship's points?

Lord Justice Collins. — Well do not push me too far. Assume this, that the people against whom his machinations were directed were the Surinam rovers who got there by sea. The post he would put, would be some post by the sea, though I agree it was possible for people to go by river. I simply look at the probabilities.

Mr Mallet-Prevost. — It would be a fair argument if instead of Gravesande it had been Beekman but it was not Beekman and Gravesande did not know.

Lord Justice Collins. — Still Beekman is the foundation of the Indian tradition and Gravesande names the Indian tradition. The genesis of that Indian tradition is the Surinam rovers trading at a point they reached by sea.

Mr Mallet-Prevost. — Still the only part of the thing that would serve as a tradition would be the thing itself and there was a post, my Lord.

Sir Richard Webster. — Gravesande put the post on the mouth of the Barima on his own map. I do not want to interrupt but that statement might shorten matters.

Mr Mallet-Prevost. — I should like you to interrupt because I want it cleared up.

Sir Richard Webster. — It is map 17 of the British atlas and in the year 1748, if you look at the inset.

Mr Mallet-Prevost. — I deny the interpretation of this map put upon it by the Attorney General. It is not the mouth of the Barima. The Barima is given as a stream and the post is put at some place *there* which is just under the list of plantations; and to say that that is to be taken as an accurate location by Gravesande of the Post in the Barima, I do not like to say is absurd but it is close to it.

Sir Richard Webster. — I did not say actual location; I say that Gravesande put it at the mouth of the Barima.

Mr Mallet-Prevost. — Well I say he does not, and the map does not show it.

Lord Russell. — Then let us identify it and see where it is.

(**Mr Harris** pointed it out to His Lordship.)

Mr Soley. — It is a good deal nearer the source than the mouth.

Sir Richard Webster. — That is a matter of opinion.

Mr Mallet-Prevost. — The Court will see the declaration below it and the fact is the post is put not to interfere with the declaration. It is out of the region of the map, and to argue from that that Gravesande put it at the mouth of the Barima — well I am glad I have not to use any such arguments.

Lord Russell. — Will somebody translate this note for us.

Mr Harris. — “ The place where formerly a trading place of the Hon. Company was established.”

Mr Justice Brewer. — Do you understand Dutch?

Mr Harris. — Yes, your Honor.

Mr Justice Brewer. — Then I want you to come and translate some of these for me.

(**Mr Harris** went on the bench and translated the passages to his Honor).

Sir Richard Webster. — I only interpose because it was suggested it was lower down opposite the Waini.

Mr Mallet-Prevost. — I am exceedingly obliged to the Attorney General for interrupting me; it has helped my position.

May I point to the fact that it is limited by that declaration which is at the bottom, and the Post is put as far away from the mouth as possible and to argue that that shows in Gravesande's mind the post is at the mouth of the river is I submit untenable.

Lord Justice Collins. — If the place where these letters are written is intended to be the position of the post then it is apparently at the mouth of the river. If you look at the trend of the coast line it turns to the left.

Mr Mallet-Prevost. — I think to arrive at any such conclusion it would be necessary to assume that that which was out of the region of the

map was drawn there according to some definite scale and system. There is nothing to show what his idea was as to the coast *there* and nothing to show the distance from *there* down and nothing to show how far, if the Tribunal will pardon my coming on the bench, to show what happens.

(MR MALLET-PREVOST went on the bench and pointed it out to the Tribunal).

The fact that that Post is evidently put there at that point is because it is as far as he could go.

Lord Russell. — You could not say it was a long way inland.

Sir Richard Webster. — 150 miles.

Mr Mallet-Prevost. — You could not say it was the mouth.

Sir Richard Webster. — I agree.

Lord Russell. — You could not say it was at the point where it discharged into the sea or Orinoco wherever it was.

Chief Justice Fuller. — As Mr Harris has translated some of these for Mr Justice Brewer I should be very glad if he would translate the notes on this for all of us so that we may be all in the same position.

Sir Richard Webster. — Yes, it shall be done for you; every Dutch note shall be translated on every map that is wanted. It is fresh evidence of course, but I think General Harrison will not object to that.

General Harrison. — I only object to your talking about anything before you have offered it to us.

Mr Mallet-Prevost. — I do not know whether your Lordship has any further question on this particular point.

Lord Justice Collins. — No, I think I have put quite enough and I am sorry I have put so many.

Mr Mallet-Prevost. — Not at all, my Lord, if I may say so. I think it has helped to clear the matter very much.

Now I repeat what I said that not only in 1758 (about that there can be no question) but also in 1748 when Gravesande spoke of the Dutch traders going as far as the Barima that he could have meant no other river, but the real Barima which we have now.

There can be no question about 1758 because we have D'Anville's map which is explained in the way I have explained it that the Amacura is a little creek which would not be reached in the ordinary course of a voyage from the Essequibo till after the Barima had been reached. I say that because today we have the correct or approximately correct location of that river and no one would go by the inland passages from the Moruca to the mouth of the Barima without touching the Barima before it touches the Amacura. If there had been a small stream flowing into the ocean between the mouth of the Waini and the mouth of the Barima which would correspond to the Amacura of D'Anville's map, that stream would not be met till after the Barima had been encountered at this point.

Lord Russell. — What are the relative sizes of the Barima and Amacura?

Mr Mallet-Prevost. — In length or character, my Lord?

Lord Russell. — As to the volume of water that is discharged into the sea.

Sir Richard Webster. — The Barima is much the larger, but Mr im Thurn can tell your Lordship accurately.

Mr Mallet-Prevost. — The water is very deep in the Barima between the Mora Passage and Barima Point.

Now when we started on this discussion I do not know whether I had read or was about to read the passage at page 144; I think I had read it.

Lord Russell. — Yes.

Mr Mallet-Prevost. — Now the next time that this map was referred to by Gravesande is at page 173 in this same volume. This was a communication which was sent by the military Commandant of Essequibo to the Spanish Commandant in the Orinoco and related to the Spanish attack on the Cuyuni Post in 1758 and in that which was the first communication on the subject of boundary from any officials of one government to any officials of the other, we have this statement, opposite C :

“ That in the name of the States General, his Sovereigns, he persists, and now for the second time demands the liberation of the prisoners, and a suitable satisfaction for this violation and insult done to the territory of his Sovereigns, and that, since it seems to him, according to the letter in question, that in Guayana and at Cumana there is ignorance of the boundaries of the territory of His Catholic Majesty and those of the States General according to the Treaties at present subsisting, he has ordered me to send you the inclosed map, on which you will be able to see them very distinctly, and these in accordance with the inviolable duty of his office, he hopes to maintain ”.

In passing I call attention to the fact that in this which is the first official communication the very title of the Dutch is based upon the treaties which exist between the two. The map referred to is the D’Anville map as will appear by a passage at page 180 at the bottom of the page where Gravesande writing to the Company says :

The Map of South America by M. D’Anville, to which I referred, was sent to me last year, at my request, by the Professor, now Rector Magnificus Allamand at Leyden, by the “ Essequibo Welvaeren,” and was at that time the last by that man. The boundaries of the different nations upon this coast of Guiana, are there distinctly marked. I had received two of them, but have, for the second time sent one to Orinoco ”.

This is the D’Anville map that was referred to, and according to the boundary in that map there is no question both the Amacura and Barima, and the whole watershed of both is left on the Spanish side; and that was at the time the Dutch claim and it never went beyond that from that

time till 1814 when it became vested in Great Britain. It receded from that but never went beyond it.

Now the next communication is the one to which I have referred, to identify this map, at page 180 and it shows that the Director General of Essequibo was informing those at home.

Lord Russell. — Before you leave that; may I interpolate this; What do you understand by the boundary which D'Anville's map suggests? If you were asked to draw the boundary according to that map what would you understand it meant?

Mr Mallet-Prevost. — It would be quite an impossibility my Lord. I suppose the nearest approach to it would be one which would of course leave all of those watersheds on the other side. It is impossible to suggest any.

Lord Russell. — While it stopped short of Barima Point and Amacura and Barima does not it strike you that it is an arbitrary line?

Mr Mallet-Prevost. — Yes; absolutely arbitrary and cannot be reproduced on a map today. It is simply impossible; the geography is such that you cannot transpose it.

Lord Russell. — And even if you produce a straight line, as it is, from the point he put it, it would cross the two rivers.

Mr Mallet-Prevost. — It would be utterly wrong.

Lord Russell. — It would cross the Amacura and Barima.

Mr Justice Brewer. — He did not know the existence or course of those rivers?

Mr Mallet-Prevost. — Not at all. He did not know the geography.

Lord Russell. — Are you entitled to say that outside that line are all the watersheds of the Amacura and Barima?

Mr Mallet-Prevost. — There is no question that both those rivers and their watersheds were recognized Spanish territory.

Lord Russell. — Well, subject to what may be said on the other side, that may be so.

Lord Justice Collins. — I do not know if I am not too pedantic but I am not sure if the watershed would be recognized because it brings it to the edge of the river and part of the boundary might be on the other side.

Lord Russell. — That is true.

Mr Justice Brewer. — It runs close to the Barima.

Lord Russell. — It does not necessarily embrace the watersheds on both sides of those rivers and I think Lord Justice Collins is right.

Mr Mallet-Prevost. — It does not run along the Barima, it touches at one point. There is no watershed that is indicated here. There was no watershed; in fact all that is alluvial deposit which is half land and half sea and in great measure a swamp. There is no such thing as a divide between those rivers till you get far inland along the coast. There is no such thing as a divide. The only place where there may be considered a divide is at *this* point. The reason of that is obvious, and now that I am on that point I will call attention to this.

Mr Justice Brewer. — About that time, in 1758, they did not know anything about the theories of physical geography and watershed.

Mr Mallet-Prevost. — Let me call your attention to this map to show how impossible it is to establish any theory of watershed. Map No 4 is a map the basis of which is the map to my right but there has been marked upon that map as far as it was possible to transfer it a portion of the geology of this territory as determined by Brown and Sawkins in the year 1873. The Tribunal will notice a yellow colour intended to show a region which might be designated salt marsh. It is this region, neither land nor sea, and there is a dotted line which runs at the back of that separating the yellow from the pink and then from the blue and approaches the coast west of the mouth of the Moruca river. That is given by Brown and Sawkins as the old beach line and to the south of that line it is firm ground. It is a line which approaches the coast at the divide, a little to the west of the Moruca, and that fact explains the physical geography of this region. It shows why the rivers to the northwest of it are simply a mass of interlacing bayous connected by itabos, the water running without any dividing line of watershed between them. It is a marshy country and it explains also the natural division which I discussed fully the other day that exists between the rivers Waini, Barima, Amacura and the others on the one hand from the Pomeroon and Moruca on the other. That coast or bayou region does not extend down towards the Essequibo except very close to the shore itself.

Mr Justice Brewer. — That is marked alluvium.

Mr Mallet-Prevost. — That is marked alluvium and it is impossible to suggest a watershed between the Waini and the Barima. There is no such thing till you get to the interior of the country beyond that line of the old beach.

Lord Russell. — It is said that there is a watershed between the Amacura and Barima.

Mr Mallet-Prevost. — Yes, that is contended for by the Attorney General but it is quite as impossible for any watershed *there*, till you get inland beyond that old beach line, as watershed between any of the other rivers; it is all one system.

Mr Justice Brewer. — When you speak of the coast line you mean the line between No 4 — that is alluvium — and No 7 — that is granite and syenite. Do you say in this geological map of Brown in 1873 there is a tracing or a statement that there is a beach line along there.

Mr Mallet-Prevost. — This is reproduced from the geological map of Brown.

Sir Richard Webster. — No statement of a beach line.

Mr Mallet-Prevost. — In a publication which accompanies that map and explains it the statement is made that it is the old beach line. There is no question about that.

That explains the utter impossibility of stating that there was any

watershed between those rivers until they get up into the interior. It is clear where that line is. The Tribunal will notice that all these rivers from their mouths up for a considerable distance are in a general way straight and they are navigable. They are deep large streams and whenever they strike that beach line they are obstructed by cataracts and from there up they are not navigable and are very meandering streams.

Sir Richard Webster. — Which is the beach line where you say the cataract is?

Mr Mallet-Prevost. — It is in map No 4 of this Venezuelan atlas.

Sir Richard Webster. — You see we cannot from the note identify the place where you say there is a cataract and we want to make it clear.

Mr Mallet-Prevost. — Do you mean that there are no cataracts?

Sir Richard Webster. — No; I do not. I am dealing with you courteously and I ask you to point it out so that it may appear on the note.

Mr Mallet-Prevost. — I have pointed to map No 4 and it speaks for itself.

Sir Richard Webster. — It will not go upon the note like that.

Lord Russell. — Do you say there was a fall on the Amacura or Barima.

Mr Mallet-Prevost. — I say that there are rapids which impede the navigation of the river after a certain point.

Lord Russell. — How far up you do not say.

Mr Mallet-Prevost. — It would appear to be from this beach line at the place where it cuts those rivers and it is obvious to the eye from the direction of the river it is changed below that; the rivers are straight streams; and in each of these rivers the firm land is shown. The first part is through alluvium.

Sir Richard Webster. — It is not identified in the short hand notes, and there are weekly steamers that go to Coriabo. It is difficult for me to know where the cataracts are.

Lord Justice Collins. — Has it anything to do with the discussion in hand?

Mr Mallet-Prevost. — Nothing at all. The nature of the coast region is important in view of the suggestion made by your Lordship and the possible watershed between those rivers.

Lord Justice Collins. — I was simply making a qualification of an inference which had been drawn from d'Anville's map.

Lord Russell. — Which I think I drew too widely.

Lord Justice Collins. — Is it suggested that any of those persons at that time had the remotest geographical notion as to the true course of those rivers? All they did is when they went inland and could not see the coast to draw a picture suggesting somehow it flowed but they had no correct notion how it flowed.

Mr Mallet-Prevost. — They had certain notions which were correct.

Lord Justice Collins. — They might think a particular river in its course constituted the boundary and yet have the ridiculous notion where

the river ran but that would not prevent the boundary running afterwards wherever the true course of that river was.

Mr Mallet-Prevost. — I do not like to disagree with your Lordship but where the boundary is shown, as this d'Anville boundary is, and where, by this boundary, whatever was the Barima river was thrown on this side, the boundary did not go along the coast of that river. If this went along that boundary then your Lordship might with justice say, wherever that river went that is what they claim as their boundary. Here they do not claim it as a boundary. They give a straight line which touches the Barima at one point and which follows the whole of the Barima to its mouth and the whole course on the other side. To say that that straight line which only touches that point is to be interpreted today as a line which goes along the whole river seems to me not a position which I am obliged to admit.

Lord Justice Collins. — You are entitled to say that that line does not run in at the mouth of the Barima.

The President. — May I ask do you know from which source d'Anville made this map? Did he travel in this country or from what source did he make it? I know nothing about him and if you can give some notion it would be very useful to the Tribunal.

Mr Mallet-Prevost. — I am obliged to Your Excellency for that question. I intended to refer presently to another subject which your question allows me to now. There has been published in the 2nd volume to our Counter Case a report which I made to the United States Commission as its secretary, and I want that report to be considered as part of my argument in this case. It is a long report and it is a report which deals directly with that question. As the Tribunal has it in print, and as it seems to me it is clear, as far as I can make it clear, I think it would be taking up the time of the Tribunal for me to go through the arguments that I have there made, to show what the D'Anville line is.

The President. — No. It is sufficient if you give us some notion of it.

Mr Mallet-Prevost. — I shall be glad to do so but I am anxious to avoid going into a discussion of it as it would practically take another day of the Tribunal's time, and the subject is fully stated in that report.

This is the origin which, in that report, rightly or wrongly, and the argument speaks for itself, I attribute to this line; in the year 1722 De Lisle published a map which is No. 38 in this atlas. It was a 3rd map which had been published by De Lisle covering this region. The first was in the year 1700; the second in the year 1703; and this map of De Lisle of 1722 has a dotted boundary line which runs from a point on the coast to the east of the entrance of the Orinoco and in a southwesterly direction. For reasons which I have set forth in that report at page 267 of the Counter Case Appendix volume II, but I do not read that — I simply answer the President's question and refer to it in support of the reasons I now state.

The line on that map of 1722 I claim is not intended as a political

boundary line at all, and I came to that conclusion by a careful comparison and analysis of this map of De Lisle with his earlier maps of 1700 and 1703. It is in my opinion merely a regional line intended to divide regions without any regard to their political status. It is in this map of De Lisle of 1722 intended to describe a certain region which is there mentioned as Guayane. Now if I be right in that contention and that is a matter which is fully discussed in the report to which I have referred, D'Anville, who succeeded De Lisle as a Royal Geographer of France, undertakes to make a large map of South America. It has been reproduced as No. 39 in this atlas; it is very much diminished in size — the map itself being very much larger and the object of reproducing it is to show that it was the map of the whole continent and not any special study of this particular region. D'Anville in drawing a line to which he — D'Anville — undoubtedly intended that a political significance should attach, did nothing more than reproduce what he found in De Lisle, accommodating it to some changes, though it is still wrong geography, and in that way De Lisle gave D'Anville's line a significance which D'Anville did not intend that it should have.

Lord Justice Collins. — I did not catch what you said De Lisle's line was intended to delineate.

Lord Russell. — Guiana.

Lord Justice Collins. — But Santo Thomé is out of that. It did not include Santo Thomé?

Mr Mallet-Prevost. — It did not include Santo Thomé.

Lord Russell. — And a great slice out of Orinoco?

Mr Mallet-Prevost. — Those questions, my Lord, are apt to lead me into a repetition of the reason which brought me to this conclusion.

Lord Russell. — And that is not desirable.

Mr Justice Brewer. — I think one thing in the President's mind in his inquiry was — is there any evidence in the records here or in any way which indicates that D'Anville had any knowledge or whether he gathered this from the reports of other geographers.

Mr Mallet-Prevost. — None whatever. D'Anville had no knowledge on this matter.

The President. — That is the question I put.

Lord Russell. — Indeed, he reintroduces the old mythical Lake Parime.

Mr Mallet-Prevost. — It was a line that had no more authority than any other man might have written with no knowledge, and yet so anxious were the Dutch to get hold of the boundary that they said, take hold of that line, and they did take hold of it and made it a basis of a claim.

The President. — Well, I have an answer to my question now.

(Adjourned for a short time.)

Mr Mallet-Prevost. — I so often disagree, Mr President, with what the Attorney General has said on the other side, it gives me much pleasure now and then to quote something of his with approval, and though

the remark was made as applying not to D'Anville, but to other geographers, I am glad to concur in these statements of the Attorney General; and the first is page 470 of the notes. He has been discussing some facts relating to D'Anville and now he says :

“ Now I come to the facts, which are more important than anything that a geographer has put down, because we do not know what information the geographer had. ”

And at another place, pages 504 and 505.

“ And this is plainer and more easy to see. Anybody who has had the opportunity of studying these maps — ”

there Sir Richard was referring to a number of them —

“ knows that no inference is to be drawn on one side or the other when a geographer has sat down in a room and drawn a particular line. We can both of us point to maps favouring our particular contentions. No Court of Justice regards it as being anything more than the best he could do from the sources of information he may have had, and, without testing it, it is of no great importance. ”

And those remarks, Mr President, in which I heartily concur have no better application than to this very line of D'Anville, which was, because D'Anville published it, taken up by Storm and put forward by him as a statement of the Dutch claim; was by him practically forced down the throat of the West India Company and finally by the West India Company put forward as a statement of the Dutch claim, without Gravesande or the West India Company understanding the why or wherefore; it is most significant in connection with the whole matter, the utter ignorance of this region displayed by the Dutch authorities. This transposition of the Barima and Amacura is no slight matter when we consider that it has been contended that the Dutch knew all about this region, that they had been controlling it politically for over a century, that the Spaniards knew nothing about it at all. We have had the ignorance of the Spaniards pointed to repeatedly, and yet the facts come out that here in the year 1758 or 130 years from the first establishment of the Dutch in Essequibo the Dutch Governor actually sends to the Spanish Governor a map in which he confesses his own ignorance of the geography of that very region which he claimed at that time, and which it is claimed for 100 years the Dutch Colony had been controlling.

At page 180, which was the last reference I made before the recess is the statement, I do not think I read it, from the Director General Storm van 'sGravesande to the Company, volume 2 of the Appendix to the British Case, page 180, at the top :

“ The time is too short to enable me to send what your Lordships require concerning Cuyuni. ”

The Company asked why he claimed this, that, and the other, and we will discuss that with the interior :

“ And in this dispatch I shall have to content myself with informing your Lordships that Cuyuni being one of the three arms which constitute this river, and your Lordships having had for very many years the coffee and indigo plantation there, also that the mining master with his men, having worked on the Blue Mountain in that river without the least opposition, the possession of that river, as far, too, as this side of the Waini, which is pretended to be the boundary line (although I think the latter ought to be extended as far as Barima) cannot be questionned in the least possible way, and your Lordship's right of ownership is indisputable, and beyond all doubt. ”

Gravesand's statement there with regard to the interior and the fact he alleges, will be better appreciated when we come to deal with those facts fully. But even with regard to the interior, and I make the suggestion in advance, his statement is only as far as this side of the Waini, which of course refers to the straight line that was run in by D'Anville. Then lower down on the same page.

“ The map of South America by M. D'Anville to which I referred was sent to me last year — ”

and so on.

That extract I read before, but it shows again that Gravesande's new notions (for they were new to him since the year before) were altogether notions that were formed by D'Anville and upon D'Anville's authority.

Now the Company answer it at page 182 opposite C :

“ We see from your letter that you extend the boundary of the Colony, in the direction of the Orinoco not only as far as Waini, but even as far as Barima. We should like to be informed of the grounds upon which you base this contention, and especially your inference that, Cuyuni being situate on this side of Waini, it must therefore necessarily belong to the Colony; for, so far as we know, there exist no Conventions that the boundary lines in South America run in a straight line from the sea coast inland, as do most of the frontier lines of the English Colonies in North America. ”

Showing the impression that this arbitrary line of D'Anville made, in the first place, on the Company. They were naturally surprised to see a straight line running in to the interior. They knew nothing of this or of any contention which determined anything of the kind, and they write to Gravesande to know what grounds he has for making this claim.

This first claim put forward by Gravesande in the year 1758, a claim which was expressed first and last by the D'Anville line, was many times

repeated by him. Every time he repeated it he seemed to grow in confidence, and it was finally incorporated by the Dutch Government itself, as I say having been forced down their throats by the Company in the remonstrance of the year 1769. Every time from now on to the end of Gravesande's administration whenever he refers to the territorial claim of the Dutch it is always the D'Anville line, nothing else. I ask the Tribunal to look at page 197 opposite B; this is from Gravesande to the Company :

“ I have been obliged to send a detachment of four of the best soldiers to the Post of Maroco as quickly as possible, because the Spaniards are beginning to put their horns out again. Besides a fine boat belonging to Mr Persik, and used only for trade (to which therefore, no blame attaches) they have also taken five canoes belonging to this Colony which were engaged in salting; on their way back they also took some canoes on this side of Barima, and thus within the Honourable Company's territory. ”

Showing there again he had the D'Anville line in mind; it was on this side of the Barima. Again we see the answer of the Company to that at page 198, opposite C, where the Company says :

“ The new outrages of the Spaniards in seizing the boat of Mr Persik and the five canoes, which were busy salting, have greatly surprised us; but we could have wished that you had transmitted to us circumstantial and sworn declarations of all this, so that, acting upon these, we might have made the necessary remonstrances to the States General about that matter. We shall still hope to receive these, and the earlier the better, together with the reasons why you deem that everything which has happened on this side of Barima must be deemed to have occurred on the territory of the Company. ”

Still the Company was not satisfied with this statement of Gravesande.

Lord Russell. — You omitted intermediately a letter which explains Gravesande's view, one at page 184, where they asked what is the meaning of this explanation about the straight line, and it shows he was not going by the straight line at all, and not reading D'Anville's map as being a boundary by a straight line. He says :

“ I have very little to add to what I have already had the honour of submitting to your Lordships in several of my despatches, and although I am aware, as your Lordships are pleased to inform me, that no treaties have been made which decided that the dividing boundary in South America should run inland in a direct line from the sea coast, as is the case with the English in North America, it still appears to me (*salvo meliori*) to be an

irrefutable fact that the rivers themselves, which have been in the possession of your Lordships for such a large number of years, and have been inhabited by subjects of the State without any or the least opposition on the part of the Spanish, are most certainly the property of your Lordships. ”

Mr Mallet-Prevost. — I had no intention of over looking that.

Lord Russell. — No; I meant to convey that while in a certain sense Gravesande appears to have adopted D’Anville’s map he does not appear to have adopted it in your sense namely treating the boundary as being a straight line which touches the Barima, but he apparently excludes the Barima and the Amacura from being in Dutch territory.

Mr Mallet-Prevost. — If your Lordship will provisionally accept my statement in that regard I will make it good in connection with the discussion of the interior, and it was in that connection I intended to discuss that passage. Parenthetically I make this statement that Gravesande in the year 1758 adopted the D’Anville line as the only line he knew anything about. From that time on there was correspondence with the Company; the Company asked why he claimed this, that and the other, and each time he answered he endeavoured to make some allegation that would support him in what he claimed. Amongst other things he did state that they had possession of this, that, and the other, as your Lordship has properly pointed out, and he stated they had an indigo plantation in the river (I will read that later on if necessary) and mining operations, and some Creole settlements, and he brings together all the facts of possession that he can possibly allege in support of this line, but those are arguments that Gravesande brings forward after he has adopted the D’Anville line and simply for the purpose of trying to give some reason for keeping himself there. Never were those things brought forward by Gravesande as things that indicated some original theory of his own, it was a theory he adopted after the D’Anville line.

Lord Russell. — My reason for intervening was to point out, while in a certain sense Gravesande adopted the D’Anville line, he did not adopt it as meaning what you think it means and what apparently it seems to me to mean on consideration of the maps.

Mr Mallet-Prevost. — In the interior he says as far as this side of the Waini.

Lord Russell. — I recollect that very well.

Mr Mallet-Prevost. — That indicates to my mind that he was thinking of D’Anville’s line as extending down into the interior; a line that on the shore was somewhere on the Waini, and hence in the interior would give them whatever territory would lay to this side, the Essequibo side, of the Waini; it was a reference to the Cuyuni.

Lord Russell. — At all events he got further in 1760, because he was actually claiming possession of these rivers.

Mr Mallet-Prevost. — The references that I am giving now are refe-

rences which bear directly on the coast, because I wanted to emphasize simply the claims.

Lord Russell. — This interposition of mine bears on the coast.

Mr Mallet-Prevost. — There is nothing in this letter which your Lordship has referred to, at page 184, which in anyway implies a claim at that time by Gravesande to the Barima itself.

Lord Russell. — What are the rivers referred to there? The only straight line is a straight line which puts the Barima and the Amacura outside the proposed Dutch territory.

Mr Mallet-Prevost. — The rivers that he is referring to when he makes this statement are the rivers in the interior, and that is very clear in connection with the whole subject of the interior.

Lord Russell. — The letter to which it is an answer is a letter which refers pointedly to the question of the straight line and says :

“ We do not understand this straight line. Now the only straight line in question at that point was the straight line which touched the Barima. ”

Mr Mallet-Prevost. — The criticism the Company made as to a straight line is the one into the interior from the coast, and the Company said :

“ We do not understand how in the interior this is to be determined by a straight line. ”

And then comes Gravesande's answer and he says “ We had possession of these rivers ”. He is talking of the interior because it is only to the interior the question of straight line can apply.

Mr Justice Brewer. — At the top of page 185 :

“ I am strengthened in my view of this matter by the fact that Cuyuni is not a separate river like the Weyne and Pomeeroon (which last has been occupied by us, and still contains the foundations of your Lordships' fortresses). ”

Mr Mallet-Prevost. — Yes, I think it may be well to read all that passage, it makes it clear.

Lord Russell. — No; if you are coming back to it again.

Mr Mallet-Prevost. — I want to remove any question in your Lordship's mind.

Lord Russell. — Then reserve yourself till you come to it in the right connection.

Mr Mallet-Prevost. — The rest of the letter makes the matter very clear indeed, but I shall for the moment limit myself entirely to the coast region. The Company's answer to Gravesande's letter as re-

gards the coast is to be found at page 198, I had read a part of it, opposite C :

“ We shall still hope to receive these, and the earlier the better, together with the reasons why you deem that everything which has happened on this side of Barima must be deemed to have occurred on territory of the Company. ”

The next time that Gravesande repeated this claim was the same year, 1761, in August, at page 200; and this was in answer, I think, to the last letter of the Company, where he says :

“ In compliance with these, your orders, I respectfully reply that the aforesaid boats, having been seized by those pirates between the rivers of Barima and Waini, were absolutely on the Company's coast, for this is certain (not to enter upon the various opinions which exist about the limits of the Company's domains) that the river of Waini indisputably belongs to the Company. ”

There again is a reaffirmation of a claim which is nothing more than the D'Anville line, which is the D'Anville line and gives the Waini to the Dutch.

Now at page 201 B, we have another statement of Gravesande.

“ After taking everything out of the Company's canoe of Aechtekerke they let it go, and it came home, but they have kept the fine new canoe belonging to the plantation Duynenburg. The latter having been captured this side of the Barima, I am of opinion that it was captured upon the Honourable Company's territory, for, although there are no positive proofs to be found here, such has always been so considered by the oldest settlers, as also by all the free Indians. Amongst the latter I have spoken with some very old Caribs, who told me that they remember the time when the Honourable Company had a Post in Barima, for the reestablishment of which they had often asked, in order that they might be relieved from the annoyance of the Surinam pirates; and then, lastly — ”

and here we have always the going back to D'Anville —

“ because the boundaries are always thus defined by foreigners, as may be seen on the map prepared by D'Anville, the Frenchman, a small extract of which I have sent by the Demerary Welvaeren. These are the only reasons, your Lordships, upon which I base my opinions, because there are no old papers here out of which any information could be obtained. ”

So here we have the reiteration again that he goes as far as the Barima. He has adopted that from the D'Anville line, and does all he can to bring

facts to support him in that contention, but it is always the D'Anville claim. It is most important, here in this connection, that we have the distinct statement of Gravesande that there are no records in the Essequibo Colony which could throw light upon this subject. There was absolutely nothing there which would indicate the existence of any Dutch settlements, or of a Dutch Post. It was only these floating traditions that he could allege in support of the boundary which he had adopted, and which, for some years before and some years to come, he was endeavoring to maintain, the D'Anville line.

Again at page 212 a statement which is taken from the Register of the Colony of Essequibo, and which is nothing more than a reiteration of the same claim to the D'Anville line. This is the "Register of the Colony situate at" (such a place). "The Creek Abary on the east, of the river Amacura on the north." There he was referring to this D'Anville map, which he had before him but will you notice the enumeration of the rivers which he gives as flowing through the Colony;

"And comprising the Rivers Demerary, Essequibo, Pome-roon, Weyne."

Those are the rivers, not the Barima, Wacquepo and Maroco. And that register in different form was repeated in subsequent years, but in other cases, showing that what was meant there was to include the Pome-roon, the Waini, the Wacquepo and the Moruca, it was nothing more than the D'Anville line over again.

Lord Russell. — That is 1762?

Mr Mallet-Prevost. — That is 1762, my Lord, yes. Then at page 226 E, we have another statement to the same effect, in 1763.

"Beginning with Essequibo, I will first mention the Posts or so called trading places four in number, of the Honourable Company. The first is Maroco, situated between this River and Orinoco, under the direction of which are the Rivers of Pome-roon and Weyni."

There is no reference whatever to the Barima or the Amacura.

Then in the third volume of the Appendix to the British Case at page 105, the bottom of the page.

"This body of Indians is wholly from the River Mazaruni. I had never supposed or been able to suppose that such a number of Caribs lived in that river alone. It is quite true that at the beginning of the last war but one I once had their number taken *grosso modo*, and it then amounted to 1,100 men capable of bearing arms; but this was the whole jurisdiction of the Company, from Abary to Barima."

A repetition of the claim that he has made over and over again. I

want to exhaust these references, there are only three more of all that Gravesande ever said on the question of Dutch claims.

In volume three at page 114 opposite D :

“ Whilst on this subject I take the liberty to inform your Excellency that mentioning the River Barima in those passes causes complaints from the Spaniards — ”

this was the letter of the Governor of Surinam —

“ who, maintaining that the river belongs to them, in which I believe they are right, some of these passes have already been sent to the Court of Spain. ”

That is directly in line with his former claim and subsequent claim, that the Dutch line went not beyond the Waini; the Barima was Spanish territory, and recognized as such.

Now I go to page 131 of the third volume, opposite D, and this relates to the action which he took in connection with that Van Rosen, I do not like to call it settlement, that lot of rescals who were there in the Barima at that time, some Spaniards and some Englishmen, and this one Dutchman.

“ I shall write to the Governor of Orinoco concerning the state of affairs in Barima, which would become an absolute den of thieves, a ragtag-and-bobtail party of our colonists staying there under pretence of salting, trading with the Indians, and felling timber, etc. They live there like savages ” —

and so on.

“ The West side of Barima being certainly Spanish territory and that is where they are. ”

I have called attention to that more than once to show that Gravesande knew what he was speaking of when he spoke of the Barima river, because this rag-tag and bob-tail party was on the banks of the Barima and the mouth of the Aruca, no possibility of confusion between the Barima and the Amacura here. Then at page 141 opposite C, he speaks of the arrest of Van Rosen :

“ Thereupon I sent the Postholder of Moruka my orders, but was careful to charge him to avoid the Spanish bank, but that he was not to avoid the islands lying in the river, because these were uncertain territory. He followed my orders faithfully, Rose having been apprehended on our shore. ”

Of course that means to the east of the Barima river.

Lord Justice Collins. — What river is he referring to when he speaks of islands?

Mr Mallet-Prevost. — The Barima.

Lord Justice Collins. — It is not the Aruca then.

Mr Mallet-Prevost. — The place marked Hobo there is as near as can be stated the location, and it is right at the junction of the Barima and Aruca, and this settlement is sometimes referred to as being on the Barima and sometimes referred to as being on the Aruca, and when he speaks of islands he means islands in the Barima because he says of the Barima the other side is Spanish territory.

Lord Justice Collins. — He refers to the Barima, not the Aruca?

Mr Mallet-Prevost. — He refers to the Barima, not the Aruca.

Lord Justice Collins. — If so that displaces your argument, which rests upon the Aruca itself, being the *locus in quo*, and not the Barima. Gravesande refers to it as Barima; you say he is wrong, and he ought to have known that the events he deals with took place not the Barima side.

Mr Mallet-Prevost. — Your Lordship has misunderstood me.

Lord Justice Collins. — To show that Storm van 'sGravesande distinguished properly between the Barima and the Amacura you say he could have been under no misgivings whatever as to the place he referred to being on Spanish territory, being west of the Barima inasmuch as it was on the Aruca.

Mr Mallet-Prevost. — If it had been on the Aruca and not on the Barima then the objection to my line of argument would be good, but it was on both; it was on the Aruca and it was on the Barima; the Aruca flows into the Barima, hence when the testimony was taken on the trial of Van Rosen, as it was shown, their camp was on the Aruca —

Lord Justice Collins. — The Aruca is a considerable way away.

Mr Mallet-Prevost. — Yes; but it flows into the Barima, and that settlement which he refers to as being on the other side of the Barima was a settlement that was at the junction of the two, and on both. I say that showed Gravesande was referring to the real Barima river, because he was speaking of the Aruca settlement. I did not mean by that it was not a settlement that was on the Barima, it was a settlement on the Aruca, which flows into the Barima, settlement was located upon both of those rivers. It identifies the Barima river as being the river as distinguished from the Amacura. I do not know if I have met your Lordship's question?

Lord Justice Collins. — Perfectly well.

Mr Mallet-Prevost. — When he is speaking in the passage I have read about the orders given to the Postholder, to be careful not to arrest van Rosen on the Spanish side, he is speaking of the Barima river.

Lord Justice Collins. — He never in anything he says shows that he knows Aruca was the place where this took place; he refers to the Barima. He must have known you say it was at the junction of the Aruca and Barima, and must have referred to the Barima and not the Amacura, because it is to the Barima and not into the Amacura that the Aruca runs.

Mr Mallet-Prevost. — That is one of my points, not all; the Barima must have been in the minds not only of Gravesande, but of all Dutchmen; it

was the river next to the Waini and would be spoken of, and hence when speaking of Waini he must have been thinking of the true Barima. I refer to this Barima incident as confirmatory —

Lord Justice Collins. — That is another argument, I am only dealing with the one.

Mr Mallet-Prevost. — Yes.

Lord Justice Collins. — And the force of that one argument depends entirely on whether Gravesande is taken to have known what was deposed to in that trial that took place, which fixed the Aruca as the spot where that took place.

Mr Mallet-Prevost. — Well, he was present at the trial, and one of the Court.

Lord Justice Collins. — He may or may not have been, I do not know.

Chief Justice Fuller. — The deposition was taken by the Commandant under the direction of Gravesande who is described as a Doctor of Laws.

Lord Russell. — Yes, he was a man of some scholarly attainments. You cannot read his letters without seeing that.

Chief Justice Fuller. — The deposition was taken by this Commandant designated by Gravesande. I think he must be taken to have known of the deposition he directed to be taken.

Mr Mallet-Prevost. — I do not think there is the slightest doubt he knew.

Lord Justice Collins. — I only try to analyze your argument. I like to sound the links as we go along, and that link is an essential one that Gravesande did know what had been deposed to before his Deputy.

Mr Mallet-Prevost. — Yes, I think I have gone through every one of the statements of Gravesande where the Barima is referred to as being a river just beyond the Dutch claims; I think I have gone through every one of his claims. If I have overlooked any it has been unintentional.

Lord Justice Collins. — I see how you deal with it, but your argument involves a transposition of chronological facts, namely you have that at a date when Gravesande did not know of the existence of D'Anville's map, and his mind was a *tabula rasa*, for some reason he takes Barima point, which is subsequently defined by his own picture as the westerly limits of the boundary. It may have been strengthened by what he saw in d'Anville's map which did not go as far as he did on that point; he did not get that idea from d'Anville's map. You have shown he had that idea, which may have been right or wrong, before he had D'Anville's map.

Mr Mallet-Prevost. — I have shown also the Baskensburg incident was in 1749.

Lord Justice Collins. — I know, that is another point, forgive me. Your main point in the argument you have been addressing to us this morning, which I have been trying to follow, and I think have followed, was that Gravesande's notion of these boundaries was entirely derived from d'Anville's map, which came as a God-send and which he clutched at and

forced upon the Dutch. I point out that your argument would be stronger if he had not assumed that to be the western frontier before he found out the existence of d'Anville's map.

Mr Mallet-Prevost. — I think your Lordship has misunderstood me as to Gravesande's statement as to the Barima before d'Anville came.

Lord Justice Collins. — We have the date of that.

Lord Russell. — The date of that is at page 58 of the second volume of the Appendix to the British Case, and it is in 1748.

Lord Justice Collins. — It is before the map was published.

Mr Mallet-Prevost. — I referred to it.

Lord Justice Collins. — Yes, I took your own argument.

Mr Mallet-Prevost. — And I do not want to get away from it.

Lord Justice Collins. — He says there (he does not include the Barima), “ and extends westward as far as the river Barima ”; that is page 58.

Mr Mallet-Prevost. — But I want to point out in connection with that statement that Gravesande, at that time, before he ever saw the d'Anville map, based, if it may be called a claim, that claim —

Lord Justice Collins. — Call it a claim for the purpose of argument.

Mr Mallet-Prevost. — Yes, I called it a claim for the purpose of argument; he based that claim on Indian tradition, and he said that

“ those sayings give not the slightest certainty. ”

I do not want to deny it is a fact before Gravesande ever saw the d'Anville line he had some hazy notion about the Barima, and he had that hazy notion because he was anxious to go there; he heard of this tradition of a Dutch Post, and it seemed to him a good thing to go there, and he spoke of the Barima in that way; he had no definite notion of the boundary and gave none till that boundary line he spoke of, this possible claim to the Barima —

Lord Justice Collins. — You push it a little too far. He did not know and does not pretend to know the exact place where it lay, that was uncertain, but he does give a limit from which on the western side he thinks it runs, namely the old Dutch fort. Now we know where that was; you have shown us his picture on the map; subject to your observation upon the map, we know within certain limits where he thought it was and therefore we know the point from which he thought the boundary ran before he ever heard of d'Anville's map.

Mr Mallet-Prevost. — If your Lordship considers that that statement of Gravesande at that time and his location of the Post upon his map of 1748 is to be taken as a Dutch claim to the Barima then the claim he subsequently put forward and which he based specifically on the d'Anville map was not a new claim.

Lord Russell. — It is not a claim of the Barima, but up to it.

Mr Mallet-Prevost. — I have been arguing and believe it to be a fact that even that claim up to the Barima was a claim which took definite shape when Gravesande came to know of the d'Anville line, and he

adopted it, and he gave d'Anville as his authority, and he distinctly stated over and over again that he had no knowledge of the boundary. Whether there was any knowledge of the boundary, he asked the Company and they said

“ No, cannot you tell us something? ”

but there is nothing in the records, and then he took the d'Anville line and said

“ That is our boundary. ”

Lord Russell. — This corroborates the position I was suggesting a minute ago, while he in one sense adopts the line he does not adopt it in the sense laid down there; he still reverts to the tradition laid down by the Indians, namely that he goes up to the Barima, not an inland boundary merely.

Mr Mallet-Prevost. — I have endeavored to answer that point, I do not think I can throw any further light upon it, my Lord.

I come now to the Dutch remonstrance of the year 1769, and I shall only refer to that phrase of it which deals with the coast. I leave the fuller consideration of the Remonstrance itself to be dealt with in connection with the interior: but it will be found in the 4th volume of the Appendix to the British Case at page 31, opposite D:

“ That they, the remonstrants, considered it their duty to further bring to the knowledge of their High Mightinesses on this occasion that the people of the Orinoco had some time ago not only begun to dispute with the people of the Essequibo about the fishing rights in the mouth of the Orinoco, and thereupon to prevent them by force from enjoying the same, notwithstanding that the people of Essequibo had been for many years in peaceful and quiet possession of that fishery, which was of great value to them on account of the abundance of fish in it; but that, further, the people of Orinoco were beginning to prevent by force their fishing upon the territory of the State itself, extending from the River Marowyne — ”

that is to the east of Essequibo —

“ to beyond the River Wayne, not far from the mouth of the Orinoco, as could be seen by the maps extant of these regions, particularly that of M. d'Anville. ”

So that we have there adopted by the States General and presented in a formal remonstrance to Spain the d'Anville line.

Chief Justice Fuller. —

“ Which on account of its precision was regarded as one of the best. ”

Mr Mallet-Prevost. — Yes. It shows the great knowledge of the States General as to their so-called possessions at that time.

Lord Russell. — Yes.

Mr Mallet-Prevost. — But there is the statement made in a formal remonstrance from Government to Government, and the Dutch distinctly define and limit their line by the d'Anville line, and the whole matter is treated from beginning to end not only as the limit of the Dutch possession but as the common boundary between Spain and the Dutch. From that time on to the year 1790 there is no evidence in the case which will throw light upon the subject of Dutch claims except the fact which I brought out in connection with the history of the Pomeroon-Moruca Post, that that Post was treated as the frontier of the colony. Storm van 'sGravesande died three years after the Remonstrance of 1769 and the activity which he had infused into the colony passed away. The Dutch as I showed in my examination of the history of the coast were excluded from the coast. They retired to the region that was limited on the west by the Moruca and the Pomeroon, and that was treated as the frontier. In the year 1790, we find the next passage which throws any light upon this subject. It is in the 5th volume of the Appendix to the British Case at page 79; these are passages with which the Tribunal is already familiar but they are all of first-rate importance and will bear a second reading. It is opposite E and F :

“ The River of Essequibo is cultivated on the eastern side from Bourassiri to Bonnasigue, and on the western side from the Toelোকaboeka to the Supinaam Creek, being a distance of 9,600 rods. However, many more lands here could be brought under cultivation if the vicinity of the River Orinoco did not prevent it, for the Spaniards there sometimes come with armed boats, called lances [lanchas], as far as Moruca, and carry away by force the Indians who dwell there, enslaving them, while, on the other hand, our negro slaves, when they run away, betake themselves to Orinoco, where they are proclaimed free. “

Then he gives a definition of the extent of the Dutch Colonies : —

“ The Colonies of Demerara and Essequibo therefore form a stretch of 24 (Dutch) miles along the coast of Guiana. ”

If we take a line of 24 Dutch miles, which is practically 100 miles, and lay it along any map from the extreme eastern point which he here mentions, it will be seen that the other extremity reaches just to about the Moruca, in some maps a little less, and in some a little more ; but it is perfectly clear from his definition as we have it here that he is intending to include within the Dutch colonies the territory that is limited on the west by the Moruca and the Pomeroon, and that there may be no question about this I call attention to two other statements made by van Grovestins; one is at page 81.

Mr Justice Brewer. — This was after Gravesande's death?

Mr Mallet-Prevost. — This was in the year 1790. It was 21 years later than this remonstrance.

The remonstrance had had no effect. The Dutch had continued to be excluded. That is the answer that the Spaniards gave, and the Dutch had acquiesced in that; I say, tacitly acquiesced; and then in the year 1790 the Dutch Governor comes forward and says this is the extent of our territories, and on page 81, opposite B, he speaks of the Postholders as dwelling on the frontiers; and then on page 147, we have his formal statements, and I wish I could remember at this moment the very apt expression that was used by the Attorney General when he spoke of the statements of Governors, that it must be understood that they were very formal statements and that Governors did not speak except after very careful consideration and so on, — he made an excellent statement which I am only sorry that I cannot repeat now, but in that connection I call attention to that passage which is about letter B :

“ After a very speedy voyage of 24 hours we arrived off the River Pomeroon, and being not too well at home on that coast we were obliged to stay at anchor over night. In the morning at daybreak we went on as far as the creek of Moruca, which up to now has been maintained to be the boundary of our territory with that of Spain upon what basis I do not know. ”

But there is the statement of the Dutch Governor in the year 1794, and he ought to know what his jurisdiction was; he ought to know whether he was controlling the region beyond or not, and he states that the Moruca, upon what basis he cannot explain, as a matter of fact is regarded as the boundary between the two, not simply as the limit of the Dutch possessions, it is a common boundary, — no *terra nullius* beyond; it is a boundary which divides the Dutch, on the one hand, from the Spaniards on the other.

The President. — The d'Anville map did not give the boundary?

Mr Mallet-Prevost. — In the year 1790 the d'Anville map had been entirely forgotten: that is clear from this statement.

Mr Justice Brewer. — In all these documents, in all the evidence, in this correspondence, and protests, and claims, and suggestions by the Governors or the officials of Spain and Holland, and for that matter of Great Britain and Venezuela up to today, is there any suggestion by any one of them, that there was an intermediate territory between the possessions of Spain and of Holland?

Mr Mallet-Prevost. — Never, until the British Counter Case was served. There is no suggestion of that even in the British Case, — never, until the Counter Case came out.

Mr Justice Brewer. — The land in dispute was always treated as belonging to one or the other, and one was claiming up to one distance, and the other was claiming up to the other distance.

Mr Mallet-Prevost. — From beginning to end, there was never any suggestion of anything else.

Chief Justice Fuller. — Was not it denied that the Swedes could come in between them?

Mr Mallet-Prevost. — Why, of course it was. The whole history of this region is against any such theory. There is absolutely nothing to support it either in claim or in fact, absolutely nothing. Before I leave this whole subject, Mr President, I shall call attention to traces that were left by the d'Anville Map and the development of the d'Anville map in other maps.

Lord Russell. — In answering that question which Mr Justice Brewer put to you, have you thought out that that answer can only be made provided the other part of the proposition is made out, which you have not argued and which you say has been reserved to somebody else to argue, namely what are the rights which follow upon first discovery?

Mr Mallet-Prevost. — I did not understand that Mr Justice Brewer's question was to the point as to whether there was a *terra nullius* or not.

He asked me whether it had ever been suggested by one side or the other that there was any *terra nullius*.

Lord Russell. — Oh! I do not suppose that it ever was suggested in terms. I only meant to point out that there must be involved in that statement that the title lay in somebody or in some state or other. According to you, it lay in Spain by right of first discovery. That answer assumes that that other proposition is made out.

Mr Mallet-Prevost. — Mr Justice Brewer asked me whether there was any suggestion in all the correspondence between the Dutch and the Spaniards or between Great Britain and Venezuela as to whether there was a *terra nullius*, and I say not only that there was not, but that these very extracts from which I have read are a distinct recognition of the fact that every inch of territory that lay beyond the Dutch possessions was Spanish territory. It is an admission of the Spanish title to what is not Dutch.

Mr Justice Brewer. — That is what was claimed. You mean that wherever the Dutch said the limits of their territory were, they conceded that Spain owned from there; and that wherever Spain said the limits of her territory were, she conceded that the Dutch owned from there.

Mr Mallet-Prevost. — Mr Justice Brewer, that is so. They say here "The Creek of Moruca which up to now has been maintained to be the boundary of our territory with that of Spain". Of course, that is an admission that what was beyond was Spanish. It is not a limit of our territory alone.

Lord Russell. — Do not be angry either with Mr Justice Brewer or with me!

Mr Mallet-Prevost. — I should be sorry if my voice indicates any irritation. I can only say that I have never had any feeling of irritation from the time that I first had the honour of addressing this Tribunal.

Lord Russell. — The question put was only directed to the point a

to whether in point of fact in the correspondence and relations between these parties either of them formally said there is between us an undefined area, which is *terra nullius*. Then the answer by you is that there is no trace of any such suggestion.

Mr Mallet-Prevost. — It is a little stronger than that, my Lord; it is, that there is none and that, what there is, absolutely negatives any such presumption.

Mr Justice Brewer. — That it negatives the thought?

Sir Richard Webster. — Certainly.

Mr Mallet-Prevost. — That there was never any such thought in the mind of either nation.

Sir Richard Webster. — Certainly.

Mr Mallet-Prevost. — There was always the point that whenever a question of boundary came up it was always a boundary between Spain and Holland.

Chief Justice Fuller. — Well, it might be susceptible of this suggestion, that it was a territory that belonged to the one or to the other.

Sir Richard Webster. — Yes.

Chief Justice Fuller. — That is one thing; but that territory also might belong to both; that would negative the *terra nullius* theory.

Mr Mallet-Prevost. — Exactly. There are some other references I want to make before I pass to comment on some of the maps.

Chief Justice Fuller. — Let me ask you one question. I do not want at all to interrupt you in your argument but there was a reference made to some secret negotiations between Portugal and Spain : When was that?

Mr Mallet-Prevost. — That was in the year 1750, I think.

Sir Richard Webster. — Yes, in 1750.

Mr Mallet-Prevost. — They were secret negotiations, the object of them being to. —

Chief Justice Fuller. — I remember that, I only wanted to know the date.

Mr Mallet-Prevost. — It was in 1750.

Chief Justice Fuller. — My recollection of them is that if the Dutch were excluded, they said, then our boundaries would be co-terminous.

Mr Mallet-Prevost. — Yes; their idea being for the Spanish from the Orinoco and the Portuguese from the Amazon to force out the nations that were along the coast, the French and the Dutch. That was the proposition. There is no question about it.

Chief Justice Fuller. — Yes, I know that.

Mr Mallet-Prevost. — At page 172 of this same volume, volume 5, there is this statement.

Lord Russell. — How long had this gentleman, Grovestins, been in the Pomeroon?

Mr Mallet-Prevost. — Grovestins had been there at the time he made this statement for certainly over four years, because the first statement

that I read directed to him was in the year 1790. So that he had been there for four years, as this was in the year 1794.

Mr Justice Brewer. — Who came right after Grevesande?

Mr Mallet-Prevost. — Trotz, I think.

Chief Justice Fuller. — But was not the Essequibo colony in an extremely reduced state at this time?

Mr Mallet-Prevost. — I am going to deal with the history of that Colony as introductory to what I have to say as to the interior. It was in a very reduced state, your Honour.

Chief Justice Fuller. — It was a small colony, was it not?

Mr Mallet-Prevost. — It was always a small colony. It had some measure of success during the administration of van s'Gravesande, and then it went down, down, and it was in a miserable condition when it fell into the hands of the English. Its prosperity has been in English hands. At page 172, opposite E, there is this statement by J. Hislop, a Lieutenant Colonel, who was at that time the Commandant of Berbice, Demerary, and Essequibo. This was in the year 1802, when the colonies were in the hands of the British, and this is the statement of the British Governor at that time.

Mr Justice Brewer. — Made to the British Government?

Mr Mallet-Prevost. — Made to the British Government. It is an official document, giving a statement as to the colony itself. I read now from opposite letter E. —

“ The west sea coast, called the “ Arabian Coast, ” is now likewise almost entirely settled. It is bounded by the River Pomaroon, at the entrance of which is the furthest military post, called the Post of Morrocco, from the name of a small creek which runs close to it. There is no part of this coast which is at all favourable for the disembarking of troops. The heavy seas, known by the name of “ rollers ”, which set in upon it make it at times very dangerous even for the plantation boats in passing to and from their estates. Besides, a landing being effected here could be of no service towards the reduction of the Colony, or rather of the Government, which is in Demerary. The attempt would be in every respect injudicious.

The foregoing lines are descriptive of the whole extent of that part of the coast of Guyana situated between the River Corantyn and the Pomaroon, and within which are included the Colonies of Berbice, Demerary, and Essequibo, called so after their rivers.

There is another definition of the extent of the colonies in 1802 by a British officer, a Governor at the time, and it shows how completely the old notion of any rights as far as the Barima had been abandoned.

Sir Richard Webster. — I think that is the gentleman who sent the map home in the letter.

Mr Mallet-Prevost. — Yes, I am going to speak of the maps in a moment, as soon as I have read those various extracts. I am not going to overlook it. Now there is another statement which though not official reflects the opinion of the time and it relates to the year 1806. It is in the third volume of the Venezuelan Counter Case at page 227.

Lord Russell. — What does the foot note there refer to? “ See the Atlas, page 35 ” : Is that the British Atlas or what is it? You will see at the end of the letter.

“ 4. General chart of Guyana ”.

Mr Mallet-Prevost. — In what connection, my Lord.

Lord Russell. — It is at the end of Hislop's letter.

Mr Mallet-Prevost. — That refers to the map. It may be convenient perhaps to take up this question of the maps now and dispose of it at once.

Lord Russell. — Please take it in your own way.

Mr Mallet-Prevost. — I will do that now, as the Attorney General has called my attention to it, once for all.

Will the Tribunal kindly take the Venezuelan atlas before them for a moment. I want to point out what I believe to be the steps that led up to the final lines suggested by Schomburgk, and this is a matter which I shall simply sketch because it is a matter which is dealt fully with in the report that I have before referred to and which is printed in full in the second volume of the Venezuelan Counter Case Appendix. Map No. 40 was d'Anville's map, and of course a great many maps were published after that, in which the d'Anville line was simply reproduced, and there are numbers of them. At page 41 of the atlas is a map or a chart which was published by Jefferys. This is a sailing chart which was published by him in London in the year 1775, and it will be noticed that the d'Anville line is reproduced. Of course the geography is a little different, but it is practically the same thing. It has a dotted line at the lower right hand corner of the map.

Lord Russell. — Yes.

Mr Mallet-Prevost. — Cape Barima is spoken of as

“ Cape Breme according to the Dutch pilots ”.

Of course *Dutch pilots* here means the Dutch Pilot Charts and the Cape is referred to in that way, the authority being those Charts, and of course it is merely an authority for the geography of this region and for the name of the Point. But the Tribunal will notice that as in the d'Anville map, the Amacura itself which is still wrongly placed, —

Lord Russell. — Yes.

Mr Mallet-Prevost. — And the Barima (which is here called the Parima), are both left upon the Spanish side of that line; in other words, this is nothing but a repetition of d'Anville.

Lord Russell. — No; it is not even that, I think.

Mr Mallet-Prevost. — Well that is the most that it is, and it is given there as a boundary. Now at page 42 there is another chart, which was published by Jefferys in the year 1781. Jefferys gives in this chart only a part of the coast. The Amacura is only suggested. It is shown as flowing partly into the Orinoco and partly into the sea, a delta being shown at its mouth, and here he writes the words “ River Amacura, which divides the Dutch from the Spanish Settlements ”. When that map or chart of 1781 is compared with the map of 1775, which precedes it, I think that it will not be difficult to see that the second one is intended to be roughly an expression of the first, because the second one of 1781 is nothing but a mere chart of a small part of the coast. There is no boundary line running inland, and in the first one the Amacura comes close to that line, and he makes that statement. Of course, Jefferys in the year 1781 could have meant nothing else, for there never was a Dutch claim to the Amacura and he had no knowledge of these matters. It was a mere repetition of what he had already reproduced in his map of 1775.

Lord Russell. — Jefferys is an English Publisher?

Mr Mallet-Prevost. — Yes, Jefferys is an English Publisher. Now there is a map of Thompson which is the next one, No. 43, in the year 1783.

Lord Russell. — Well, he must have got this statement from some place or other.

Mr Mallet-Prevost. — There are innumerable maps, my Lord, from the time of d’Anville on that reproduced the d’Anville line.

Lord Russell. — But the d’Anville line is not on this map No. 42.

M. Mallet-Prevost. — It is on, the first one, if it can be taken as d’Anville’s line, and there is certainly no other line like it on the map of 1775. The d’Anville line is clearly shown and that clearly goes to show that Jefferys had the d’Anville line in his mind, probably not intelligently but he recognized it as a line that was on a great many maps of that period. He probably did not recognize it as the d’Anville line. It is only when we come to examine all these maps that we find that d’Anville is the author of that line, nobody having suggested it before him, but a number have followed him and copied it.

Lord Russell. — I do not know that it is of importance, but perhaps I may say this in that connection; in the map of 1775 the boundary given is given as a straight line which does not correspond with the d’Anville line, although I agree it is somewhat like it. For instance it is much further away from the rivers and so on, but in the other there is no line given at all, and the statement there is that the “ River Amacura ”, and this is at the mouth of the Amacura, “ divides the Dutch from the Spanish Settlements. ” He clearly therefore means that it is the river which divides them.

Mr Mallet-Prevost. — I lay three facts before your Lordship.

Lord Russell. — I do not see that it has any great value, but he must have obtained the information from somebody.

Mr Mallet-Prevost. — But I call attention to three facts, which I state

as facts. And the first is that this same publisher Jefferys had a few years before published a map in which he shows that so far as he had any notions of boundary they were the d'Anville boundary. The second fact is that, as a matter of historical fact, the Dutch had made no claim to the Amacura and that hence Jefferys cannot be supposed to have been obtaining any original information and expressing it in this way. In the third place, that this is the first time in the maps of that period that the Amacura was suggested as a boundary. There is no other map prior to the year 1781 which suggests that as the boundary.

Lord Russell. — That all goes to the value of it.

Mr Mallet-Prevost. — Now when those three facts are taken together it seems to me that it indicates that this second map of 1781 is intended to roughly express what the first map had set forth.

Lord Justice Collins. — Is the Amacura in the second map the real Amacura or is it the Barima?

Mr Mallet-Prevost. — No; it is the same Amacura which appears in the first map, and it is the Amacura. You cannot say it is the real one or the unreal one, it does not exist at all; it is a little stream to which D'Anville gave the name of Amacura and which appears on the d'Anville map. It does not exist and never did exist there. It is entirely imaginary, and it is given the name of Amacura, but it does not correspond with the present Barima river or to the present Amacura river. It does not really correspond to any river.

Lord Justice Collins. — It is a river the mouth of which is immediately to the west of Cape Barima?

Mr Mallet Prevost. — It is partly to the west and partly to the east. One branch flows into the Orinoco and the other flows into the ocean, and in this map Cape Barima is placed between the two mouths. I ask the Tribunal to notice that fact, because there are still two other maps of Jefferys which we shall have to look at; but before going to Jefferys' third map there was a publication by Thompson in the year 1783 which is the next map I want to refer to; it is map No. 43. Now Thompson whether he got his notions from the suggestion in Jefferys' map that the river which flowed from the point, whatever that might be, was the boundary or not, he marks a boundary along the Barima river.

Lord Russell. — Yes.

Mr Mallet-Prevost. — And he says western boundary of the Dutch according to their claim.

Sir Richard Webster. — He puts it west of the Amacura.

Mr Mallet Prevost. — He puts it to the west of the Amacura and designates a river which undoubtedly corresponds to the present Barima. It is the Barima which flows into the mouth of the Orinoco. The Amacura is a mere creek, as he marks it there; a creek which is utterly insignificant in comparison with the other river. But if Thompson, upon the geography which he has on this map, had taken the Amacura as the boundary he would have been digressing very far from what Jefferys had

indicated before. They were both English publishers of sailing charts and it seems to me not too great an assumption here to suppose that Thompson was influenced in his work by what Jefferys had done only two years before; and this western boundary of the Dutch, according to their claim, which again of course is not a fact as they never made that claim, is here shown and the straight line of d'Anville has quite disappeared.

Lord Russell. — But why do you say that they did not make the claim up to the Barima?

Mr Mallet-Prevost. — Why, my Lord, I have just gone through the whole history of the claims and have shown that the Dutch never claimed the boundary of Barima. They say we go beyond the Waini. They give the d'Anville line.

Lord Russell. — I thought that attention had been called to several letters of Gravesande in which he said up to the Barima. But I do not want you to go back upon that.

Mr Mallet-Prevost. — On each one of those I have shown that when he said up to the Barima he spoke of a point in the interior. He did not speak of the mouth at all.

Lord Russell. — I am not at all satisfied about that.

Mr Mallet-Prevost. — It is the fact as is shown in the d'Anville map.

Lord Russell. — However, in some sense it is true, that the claim that had been made, was a claim up to the Barima.

Sir Richard Webster. — Up to one side of it.

Mr Mallet-Prevost. — Well, I have shown by the history of this whole thing that there never was such a Dutch claim and that when the only remonstrance, the only formal document that was presented to the Court of Spain in the matter is examined, it was a line which did not include the Barima and which did not go along the Barima at all; and hence when Thompson in the year 1783 —

Lord Russell. — The question of claiming the Barima is one thing, but that is another thing altogether.

Mr Mallet-Prevost. — It says that the Barima river is the boundary. The Dutch never claimed that. The Dutch presented to the Spanish Government the d'Anville map; and the d'Anville line does not go along the Barima. It touches the Barima at one point and at one point only, and therefore, when Thompson in the year 1783, makes a statement that the Barima from its source to its mouth is a Dutch claim that has been made, he states something which is not true. There never was such a claim.

Lord Russell. — Why is that called Cape Breme?

Sir Richard Webster. — That is a Dutch name for Cape Barima.

Mr Mallet-Prevost. — It is taken directly from Jefferys' first map that I called attention to at page 41. When he says "Cape Breme according to the Dutch pilots", I call the attention of the Tribunal to the fact that that means the Dutch sailing charts. It is Cape Breme of these geographers.

Lord Russell. — Are there any Spanish sailing charts?

Mr Mallet-Prevost. — I do not know whether there were any at that time or not. I am not able to answer your Lordship's question.

Chief Justice Fuller. — It is the Dutch translation of the word "Barima?"

Mr Mallet-Prevost. — Yes. When it says according to the Dutch pilots it means according to those particular charts, and when Thompson says Cape Barima he says "Cape Breme according to the Dutch pilots"; he is distinctly referring there to the map authority and not to the national authority as that Cape did not belong to the Dutch.

Lord Russell. — Yes, I quite agree. It has not that broader signification.

Mr Mallet-Prevost. — Now will the Tribunal kindly look at page 44 which was in the year 1792.

Lord Russell. — But why do you say that it refers to the Dutch charts and not to the Dutch pilots which is what it says? I ask you, were not there in fact Dutch pilots?

Mr Mallet-Prevost. — Those Dutch charts are called Dutch pilots. I understand that that is the name by which they go.

Lord Justice Collins. — I thought you said that it did not refer to Dutch title, and the Lord Chief Justice thought you said Dutch pilots. I think that is the explanation.

Mr Mallet-Prevost. — Each one of these maps, (there are a number of them) this one of Thompson's is the first one, which puts into the mouth of the Dutch a claim —

Lord Russell. — I am sorry to interrupt you, but my learned Colleague did not quite catch what I meant. This was on map 41, "Cape Breme according to the Dutch pilots"... that is what is upon that map: What was your authority for saying that that means according to the Dutch charts?

Mr Mallet-Prevost. — Because the Dutch charts are called Dutch pilot charts and this is geography according to those charts.

Lord Russell. — Where is the authority for that?

Mr Mallet-Prevost. — I think that that is a well known fact. I do not think that that is a fact that will be disputed.

Sir Richard Webster. — We think that it refers to the Dutch pilots who knew all about this coast.

Mr Mallet-Prevost. — I think that the Attorney General is wrong. But let me assume that it is according to some information which is brought to them by Dutch pilots. I do not think it is so, but let me suppose it —

Lord Russell. — You need not argue upon it. I only wanted to know what it means.

Sir Richard Webster. — The Dutch word for charts is the well known word of *Pas Kaarte*. I never heard a Dutch chart called a pilot before.

Mr Mallet-Prevost. — I will bring evidence of that fact.

Chief Justice Fuller. — Does it make any difference?

Sir Richard Webster. — Not a bit.

Mr Mallet-Prevost. — I do not think it makes a particle of difference.

Lord Russell. — I do not think it makes any difference substantially, except on a point of accuracy. The point that will be used against you will be that it shows familiarity by Dutch pilots and Dutch charts as opposed to no similar familiarity by Spanish pilots and Spanish charts.

Mr Mallet-Prevost. — There are a number of maps published called West India pilots.

Sir Richard Webster. — Yes, published by Great Britain.

Mr Mallet-Prevost. — There are a great many publications of that kind and they are called pilots.

Sir Richard Webster. — The West India pilot is the name of a book. Great Britain publishes a number of books all over the world and there are West India pilots which give directions to the pilots of this district. That is what is done.

Mr Mallet-Prevost. — But it does not make any difference.

Sir Richard Webster. — It is within the last 20 years.

Lord Russell. — It may mean the same thing or it may not. Now you are going on to the next map?

Mr Mallet-Prevost. — I was going on to say that Thompson's map of 1783, before I left that map, is, if not the first, one of the first of a series of maps which puts into the mouth of the Dutch authorities a claim that they never made. And I cannot sufficiently emphasise that fact, that the only claim that was ever communicated to Spain was the claim that was made in the Remonstrance of 1769, and that can have no relation whatever to the thought that individual Dutchmen may have had about the boundary either before or after. Now in the next map, No. 44, Jefferys of 1792, we see the influence of Thompson's map. Here Jefferys is similarly following Thompson. He has put Cape Barima, or Cape Breme of the Dutch, just as Thompson did, following his phraseology. He has kept Thompson's geography of that particular point, if the Tribunal will be good enough to compare the two, thereby deviating from his own former geography of the Barima. The Amakur Creek is no longer apparently emptying itself into the Orinoco and into the Waini but is made to empty entirely into the ocean, and he gives that dotted line along the Barima River which, although it does not correspond, is undoubtedly intended as an indication of the boundary, and this is in the year 1792.

Lord Russell. — He also was again misplacing the two rivers?

Mr Mallet-Prevost. — Yes; and it is perfectly surprising, the ignorance of the Dutch, and afterwards of the British with regard to this region. Even Arrowsmith as late as the year 1832 misplaces these rivers. It was a *terra incognita* to the Dutch and to the British.

Chief Justice Fuller. — What do you mean by that? The Dutch

sailors knew how to get in and out of these rivers, and from the rivers to the ocean?

Sir Richard Webster. — And the English too.

Chief Justice Fuller — Yes, and the English too.

Mr Mallet-Prevost. — I was referring to the geography of this region and the misplacing of these rivers and my expression may have been a little too strong.

Lord Russell. — You mean to refer to the ignorance of well informed people and not of ordinary individuals.

Mr Mallet-Prevost. — I do not think they were well informed on this subject sometime ago. They are now.

In the year 1795, Jefferys published another chart. In that he gives the Barima river, which divides the Dutch and the Spanish lands, being a reiteration of what he has said before. Then we come to Bouchenroeder's map which is the one at page 46 and which was published three years later.

Lord Russell. — Who is he?

Mr Mallet-Prevost. — Bouchenroeder was a Dutchman. This map was published in Amsterdam.

Mr Justice Brewer. — This is while the English were in possession?

Mr Mallet-Prevost. — Yes, they were in possession at that time, 1798.

Mr Justice Brewer. — Was he an agent of the Dutch?

Mr Mallet-Prevost. — Bouchenroeder made a survey of the river itself. His map is published in the British atlas and gives the plan-tations and so on of the River Essequibo.

Mr Justice Brewer. — He is called Major Bouchenroeder?

Mr Mallet-Prevost. — Yes.

Mr Justice Brewer. — And was not he sent out by the Dutch or the English government to make a survey of this territory?

Mr Mallet-Prevost. — He did make a survey but I do not know whether he was sent out expressly for that purpose or not. He puts a line here which is a combination of these various maps, to which I have been calling attention, and of the old d'Anville line. He again misplaces the rivers Amacura and Barima showing that his survey did not go very far but was limited to the Essequibo river. The whole geography of this coast down the Orinoco and the Moruca is utterly wrong and he puts down a line here which I say corresponds in a general way with the direction and the character of the d'Anville line except that it goes along the Barima river and shows the influence of the map makers which had gone before him; and little by little Jefferys, Thompson, and the others had been unconsciously shoving this line over in the direction of the Orinoco.

Lord Russell. — He goes along the line of a river which he calls the Barima which corresponds to the River Amacura.

Mr Mallet-Prevost. — Well, it is hard to say what it would correspond with.

Lord Russell. — He has also got a traditional something or other, an ancien Dutch Post on the limits of the possessions of Spain.

Mr Mallet-Prevost. — My Lord, that is not the last time that that appeared. If your Lordship looks, you will see it appears upon that map as the site of the Dutch Post in the year 1584. We shall have that thing reproduced. 200 years ago, a man made a suggestion to put a shelter there, and it has grown and grown and it has influenced not only the action of map makers but it has influenced the action of Governments, all upon the belief that that thing was really a Dutch Post there.

Chief Justice Fuller. — Well, he did put a shelter there.

Mr Mallet-Prevost. — He did put a shelter there. There is not the slightest evidence that the postholder at Pomeroon ever visited the shelter or ever stayed there, and the very moment that he referred the matter to the company, they told him to stop all the trade to the Orinoco. That is the first and last we hear of it.

Chief Justice Fuller. — We subsequently get a reference to it as an unknown shelter.

Mr Mallet-Prevost. — Yes; abandoned.

Lord Russell. — No; it is not called abandoned, but I imply it was abandoned; it is called an unknown shelter.

Mr Mallet-Prevost. — I say it was abandoned; and the very Dutch who went by there and saw it did not know anything about it.

Chief Justice Fuller. — There is some foundation for it.

Lord Russell. — There is more foundation for it than there is for a great many things handed down.

Mr Mallet-Prevost. — There is more than one straw to make the shelter; that is about the strength of the foundation, my Lord.

Lord Justice Collins. — I see that somehow or other the tradition survived.

Mr Mallet-Prevost. — Yes; the tradition survived.

Lord Russell. — And upon questions of this kind, tradition handed down from generation to generation is often the only evidence you have.

Mr Mallet-Prevost. — And where it is the only evidence, some account may be taken of it; but where that tradition is explained by documents and the basis of the tradition is disclosed and we know what it was, then that tradition ought to fall. If we know what the basis of the tradition is, the tradition is only good as an evidence of what was; it is only evidence, it is not a fact; and, if we get at the fact, then the secondary evidence amounts to very little.

Lord Russell. — That is the difficulty. However that is clear enough; it would make the boundary line according to this map up to, but not apparently to include, the river Amacura; that is the effect of it.

Mr Mallet-Prevost. — Now at page 47 of the atlas is another map of Arrowsmith of 1832 (this is an English geographer) and it shows once more the ignorance of the geography of this region.

Mr Justice Brewer. — No; this is right.

Mr Mallet-Prevost. — Yes; it is the first map in which they are correct, the Barima being to the east and the Amacura to the west, but the names have been transposed. The line which was placed on the westernmost river has been retained and so the line which once was intended to be on the Barima jumps over and goes to the Amacura. There is a certain attempt as is evident in this map —

Lord Russell. — When you say the line, you refer to the red boundary line?

Mr Mallet-Prevost. — Yes; and to the boundary indicated by these maps. Thompson says the boundary went along the Barima, and Jefferys indicates a line along the Barima, and when Arrowsmith publishes in 1832, he corrects the position of those rivers, but he leaves the boundary going along the westernmost of those two streams.

Sir Richard Webster. — No; he leaves the Amacura half way up and goes up the Cano-Coyoni, and he does not follow the Amacura all the way along. He leaves the main course of the Amacura a third of the way up and goes up the Cano-Coyoni.

Mr Mallet-Prevost. — I shall be glad to allow the Attorney General to explain these maps.

Sir Richard Webster. — I was venturing to correct a mistake; that is all.

Mr Mallet-Prevost. — I do not think it is a mistake; and I put it the original line had gone along the Barima; and now when the names of the two rivers are changed the line instead of going along the Barima goes along the Amacura, and then I will continue what I was about to say, when the Attorney General was good enough to interrupt me, and that is there is an apparent effort here to do away with the entire arbitrary appearance of that straight line which is the line that has appeared always before, wherever it was anything more than a mere lettering along the course of a river, and there is an attempt to adjust the line along the direction of a general north and south line, a line which in a general way still corresponds to the old D'Anville line, not existing in its general direction because of the changed geography, but which is still the result of the logical D'Anville line, and I shall conclude the examination of these maps at this point saying that this was the map to which Schomburgk referred later when he proposed to the English Government to survey a line. This is the map from which he received his first information as to a boundary.

Lord Justice Collins. — You notice to whom it is dedicated, to the aide-de-camp of the liberator.

Chief Justice Fuller. — Wilson, who is he?

Mr Mallet-Prevost. — He was the Chargé, or Minister Resident of Great Britain in 1850; he negotiated the agreement of 1850.

Chief Justice Fuller. — Did he have anything to do with the lighthouse on Barima Point?

Mr Mallet-Prevost. — No; that was Sir Robert Ker Porter.

Chief Justice Fuller. — There was a Vice Consul that at Angostura had something to do with that.

Mr Mallet-Prevost. — That was Mr Hamilton. There will be found traces in maps, not only in these, but others, Walker's amongst them which come right down to the present time, the influence of this original D'Anville line modified in this way, always travelling further and further toward the west, but excepting any statement of maps in that way, which of course do not constitute Dutch claims, but at most intend to record what they believed to have been Dutch claims, excepting for that, there is no evidence of any kind that subsequent to the year 1769 a claim was made to any region beyond the Moruca and the Pomeroun. And I have pointed to the statement of Governor Grovestins in 1790 and 1794 and then to the statement of Hislop in 1802, as to where the boundary was between the Dutch colonies and the Spanish domains.

This completes what I have to say on the subject of claims on the coast and my examination of the history of the coast region and it becomes necessary now to pass to a consideration of the interior.

Lord Russell. — Arrowsmith's map of 1840 is the same, is it not?

Mr Mallet-Prevost. — No; my Lord, that was a map published, I think, by the uncle of this Arrowsmith; one was John Arrowsmith and the other was Aaron Arrowsmith; the map at page 48 is the map that was published by Aaron Arrowsmith.

Mr Justice Brewer. — On page 47 it was John Arrowsmith.

Mr Mallet-Prevost. — If the Tribunal look at the map at page 48 and the statement below; it was first published in 1811, but my recollection, at this moment, is that, as first published in 1811, it either had no boundary line or a different boundary line.

Lord Russell. — Yes; I was not comparing that, pages 32 and 40 are practically the same.

Mr Mallet-Prevost. — No. 40, which is a second edition of the one of 1811, was published by the same man who published No. 32. Aaron Arrowsmith was the uncle of John Arrowsmith, who succeeded to the establishment. It was after Aaron Arrowsmith's death that John Arrowsmith published the map, page 47, and in 1840 he published a second edition of the map of 1811.

Mr Justice Brewer. — That is not before us.

Mr Mallet-Prevost. — No; my recollection is it is the same map as 1840, without the boundary, I say that subject to correction, but it is a matter of no moment one way or the other.

I do not know if the Tribunal desire me to enter now upon the history of the interior, or if it is better to take it up as a fresh topic at the present session.

The President. — I would ask you when you propose to continue; Tomorrow, or will you be too tired?

Mr Mallet-Prevost. — I wished I might. I am afraid I shall be forced to ask the indulgence of the Tribunal. I have had six days consecutive

speaking except Sunday, and I have some notes to prepare for next week, and I am afraid if I continued tomorrow I would not be able to deal with the subject to the best advantage, but if the Tribunal —

Lord Russell. — What is there material you can go on with if you do not go on this ground of the interior? What other topic do you suggest to take up?

Mallet-Prevost. — I must go into this. I was only asking if I should go into this, or break off now.

The President. — Let us go on till 4 o'clock; we have only 20 minutes more.

Mr Mallet-Prevost. — Now before I treat the history of the territory which is comprised between the Essequibo, on the one hand, and the extreme claim of Great Britain on the other hand, in the direction of the Orinoco, I desire to refer, as briefly as I can, to some of the most important facts in connection with the history of the Essequibo colony in the river Essequibo.

Mr Justice Brewer. — Before you commence that you talk of going into this interior territory. Do you mean south of the Imataca range and west of the Essequibo?

Mr Mallet-Prevost. — Everything bounded by the Imataca on the north and by the Essequibo on the east; the whole interior.

Mr Justice Brewer. — Including the Missions?

Mr Mallet-Prevost. — Yes.

Lord Russell. — That practically means from the Orinoco down to the Cuyuni?

Mr Justice Brewer. — And you divide it into three regions.

Mr Mallet-Prevost. — The coast region and the other, which is a large interior region, and which is susceptible of a further sub-division; for instance the Upper Essequibo, the Cuyuni and the Massaruni, but the history of the Upper Cuyuni is very brief, and I think we can treat the whole history altogether. I want to introduce what I have to say with regard to the history of this region by the history of the Essequibo colony itself, and I do that because it is only when the character of that colony is understood, its weakness and its strength, what it was, that we are properly able to appreciate what is alleged in regard to it, in the interior. It has been represented as a great, growing colony, a colony that needed room to spread, a colony that was forcing the Spaniards out of this whole territory, and threatening the Spanish possessions in the Orinoco itself.

Lord Russell. — I do not think forcing the Spaniards out; the allegation is they never were there.

Mr Mallet-Prevost. — The Orinoco?

Lord Russell. — No, the Essequibo or the territory in dispute.

Mr Mallet-Prevost. — I was speaking of the whole region. I think it has been put forward by the Attorney General the Missions were afraid of the Dutch, and the Spaniards in the Orinoco itself were afraid of the Dutch, leaving the impression upon me. We are very thankful to the

Dutch for having left us even Santo Thomé. There is that impression; that has been created. I think it is most important before we go into the history of this interior that we should know the exact condition of the Essequibo colony and the Essequibo river.

The President. — For what time?

Mr Mallet-Prevost. — From 1648 to 1814; and I state that from 1648 to 1656 there is no evidence as to the Essequibo. In 1648, as I pointed out when I discussed the history prior to that date, the Dutch colony was simply a trading post in the Essequibo river, and it continued as a trading post for some years to come. There were no colonists there, properly speaking; there were traders housed, as far as we can tell, housed on the island of Kijkoveral and for a number of years, from 1648 to 1656, there is no evidence to show there was a change of any kind. In 1656 the Tribunal will remember the West India Company published a set of conditions inviting colonization along the Wild Coast, and that producing no result a new set of liberties, exemptions, and conditions, was published in 1657. As the result of that, a colony on the Pomeroon, was established. While it lasted, the colony on the Pomeroon was the most important part of the whole colony, and the Essequibo itself took a second place. It was on March 22, 1657, that the first free colonists, to the number of 12 persons, some with, some without, wife, family, children and slaves arrived in the Essequibo. The authority for that is the Netherland Year Book of the year 1751, page 1093, it is an authority that is referred to by Professor Burr, who makes the statement; and his statement is in the second volume of the Venezuelan Counter Case page 76. So that up to this time, 1657, the occupation of the Dutch in the Essequibo had been simply the occupation of a trading post.

Mr Justice Brewer. — Located where?

Mr Mallet-Prevost. — Kijkoveral.

Mr Justice Brewer. — No plantations adjoining?

Mr Mallet-Prevost. — No plantations whatever.

Lord Russell. — There were at Pomeroon?

Mr Mallet-Prevost. — No; it was in 1658 the first Colony was established in Pomeroon. From 1658 to 1666 the colony was passably prosperous, and the most important part of the colony, Essequibo, taking a second place.

Mr Justice Brewer. — There were plantations at Pomeroon?

Mr Mallet-Prevost. — Undoubtedly; in that year, I have no doubt of it.

Lord Justice Collins. — There was nothing according to your argument for the Treaty of Münster to operate upon as far as Essequibo was concerned.

Mr Mallet-Prevost. — Only the trading post.

Lord Justice Collins. — I did not think you counted a trading post as occupation or possession.

Mr Mallet-Prevost. — I have not treated it so.

Lord Justice Collins. — In that view there would be nothing, as far as Essequibo is concerned, for the Treaty of Münster to operate upon.

Mr Mallet-Prevost. — I think that is pressing the argument too far.

Lord Justice Collins. — One tests an argument by pressing it to its logical consequence.

Mr Mallet-Prevost. — The trading post, whatever it may have been, lasted; it grew into a colony.

Lord Justice Collins. — Forgive me, I was dealing at the date of the Treaty of Münster.

Mr Mallet-Prevost. — At the date of the Treaty of Münster there was a trading post at Kijkoveral, and that was all the possession the Dutch had at that time. They had erected a fort there and permanent buildings and got there for the purpose of remaining there. It was not a post there in the sense that some of the posts were that they subsequently established in this territory where they sent an outlier and which they moved backwards and forwards; it was a trading post put there for the purpose of remaining, and in that way it is differentiated from a trading establishment without any intention of occupation. A trade may be carried on in two different ways, and a post may be established in two different ways. A post may be established purely for the purpose of trade; or the intention of those who go there may be an intention to remain and to occupy that territory, and to make it the basis of a permanent settlement; and it seems to me that that is the correct light in which this settlement at this post at Kijkoveral is to be viewed. It was not merely the erection of a shanty there, there was something in the form of a colony.

Lord Justice Collins. — It was not a trading post in the sense in which you used it?

Mr Mallet-Prevost. — No; there was a Commandeur, and some sort of organization there; they went there and erected permanent buildings and a military post.

Lord Justice Collins. — I understand when you brand a thing as a trading post only, the object is to wipe it out as evidencing possession?

Mr Mallet-Prevost. — Where there is a trading post without any other evidence of intention to possess or establish permanently, then it belongs to the category I have referred to.

Lord Justice Collins. — Then the only purpose is to displace it as evidence of possession. If it is something more it does not do it harm to brand it "trading post" because it serves that purpose. If, as your first point apparently was here, the post was only a trading post, it follows the Treaty of Münster did not apply to it at all.

(Adjourned till Monday at 11 o'clock.)

TWENTY FOURTH DAY'S PROCEEDINGS AUGUST. 7, 1899.

The President. — Mr Mallet-Prevost, the Tribunal is ready to hear your argument.

Mr Mallet-Prevost. — Mr President, when the Tribunal adjourned on Thursday last, I had just begun to speak of the history of the colony of Essequibo in the Essequibo river. I propose to take up that story this morning, and, as briefly as possible, to go through it. My purpose in doing so, is, in the first place, to show that this was not the great and expanding colony which it has been represented to be, a colony growing and that needed more territory for its growth and whose expansion naturally took in immense tracts of land along the coast and up along the interior rivers. In the second place, I desire to show that it was not the powerful and strong colony that it has been represented to be, one that was threatening the continuation of Spanish dominion in the Orinoco, and one that was overshadowing completely the Spanish possessions in that direction. In the next place, the history of this Essequibo river settlement will show that its growth was, as a matter of fact, limited toward the interior by the lowest falls of the three rivers Essequibo, Cuyuni, and Massaruni, in very much the same way as along the coast its growth was limited by the wet savannah between the Moruca and the Waini. In the next place, the history of this colony will show that, while during those early years it was clustered about the junction of these three rivers and, so to speak, in the interior, compared with its subsequent history, the tendency after a few years was down stream towards the mouth of the Essequibo. It meant, in fact, a practical abandonment of its former site about Kijkoveral, and the colony little by little tended not only towards the mouth of the Essequibo but towards the east in the direction of Demerara. So that when it finally fell into the hands of the British and was confirmed to them by the Treaty of London in the year 1814, Demerara was the principal part of the colony, and Essequibo had become more and more unimportant.

I am anxious to go through this history as briefly as possible. I shall read as few extracts as I can, in order to make the matter clear, and I shall, as far as may be, give references to others and omit many both in reading and in reference that I might bring to support the position which I have stated.

I spoke of this colony the other day as being for many years a mere trading post, and in answer to a question which was put to me by Lord Justice Collins I endeavored to draw a distinction between this particular establishment and the other trading posts which the Company from time

to time maintained in different parts, away from Kijkoveral, and among other things I made the distinction which in view of the language of the Treaty of Münster is a very important one, that the trading post, if I may call it by that name, at Kijkoveral, was a fortified post; it was a fort, and a Dutch fort, and such places were confirmed to the Dutch by the language of the Treaty of Münster. My object in speaking of it as a trading post was specially to emphasize the fact that in its early years there was no effort, no effectual effort, to establish a colony there in the sense of extending plantations. In fact the very first mention which we have of anything of that kind in the records is in the year 1664, some 16 years after the Treaty of Münster, when one Jan Doensen took possession of a piece of land and there being no registry in Essequibo itself, he presented a petition to the Directors of the Zeeland Chamber at home, asking that the land be registered in his name. That reference will be found in the first volume of the Appendix to the British Case at page 162 F, and on page 163, A to C.

In the year 1666 came the destruction of the Pomeroon colony and the temporary British occupation, and in the year 1670 Hendrik Rol was engaged and sent out to the colony as its Commandeur. It is noteworthy in that connection to see that when he appeared before the Chamber, he informed them that he was,

“ ready to depart for Essequibo at the order of the Chamber, adding to this that the business in Essequibo and Demerara can be attended to by him at the same time, since they lie only three [Dutch] miles apart ”.

It was the business of the Company that he was going to attend to, and evidently the attention of one man was quite sufficient to attend to what there was to be attended to in Essequibo and in Demerara. That is to be found in the second volume of the Venezuelan Case, at page 35. In the year 1674, and I mentioned it only as indicating what must have been the very small size of the colony, there was a discussion before the Zeeland Chamber of the West India Company, which resulted in a resolution to send out to the colony a mason, a cooper, and 2 or 3 outliers. That is in the first volume of the Appendix to the British Case at page 173, opposite E. In the same volume page 175, opposite F, we find a record of the fact that three outliers were sent out.

From the year 1674 to the year 1686, every reference which is in the record relates to trade with the single exception of one in the year 1681, when there is mention of a Cassava field having been cleared on an island. In the year 1684, we have the record of a redoubt, as it was called which was built by Beekman on the island of New Walcheren or Stampers island as a protection against an attack expected from the Ccaribs and the French-

Lord Russell. — What island?

Mr Mallet-Prevost. — Stampers island. It is variously called, my

Lord. It is about there (pointing it out on the big map.) But the reason I mention it is this, that the colony, at that time, was clustered about there, and Stampers island was an out-post. It was a place away from the colony and it was taken and fortified for that very purpose, the colony as yet having hardly extended beyond the original site at all.

In the year 1686 the river of Essequibo was formally thrown open to private planters, and private planters were invited to go there. In the year 1689 there are certain references to the measures which were taken for the protection of the colony, which go to show what that colony must, at that time, have been. The reference, that I shall read a few lines from, is in the second volume of the Appendix to the Venezuelan Case, at page 59. It is document N° 58. The document begins by speaking of some report that had come from a skipper who was down near the mouth of the river as to some expected attack from the outside, and then it continues in this way :

“ Inasmuch as skipper Steven de Waterman is ready to depart today with his boat for Surinam, I did not wish to let pass this opportunity of informing you how this news has caused me to look about and employ all means necessary for our defence; that is, above all, to keep a good lookout-watch four or five miles down the river — ”

and that points to what I just mentioned, that a very short distance down below Kijkoveral was a place that could be regarded as a lookout-watch —

“ to fortify with a double row of strong palisades the house of the Company's plantation New Middelburg, which stands upon a high hill — ”

Mr Justice Brewer. — Is that on the Pomeroon ?

Mr Mallet-Prevost. — No; that refers to a plantation in the Essequibo itself —

“ to have Mels Goethals and one foreman with all the slaves of the Company's plantation since the latter is very weak in slaves, transferred to it, — and to add to the six men of those two plantations five or six more men, with two or three small pieces of ordnance, so as to be able to resist a hostile barque or other small craft and not be forced every moment to seek shelter at the fort from so slight a force ”.

Many references have been read in reference to the Orinoco and to the fort there, and to the necessity, from time to time, of retreating to the fort for protection against Carib attacks, and those references have been made in such a way as to imply that at that very time the Dutch from Essequibo were spreading out and were forcing the Spaniards into their fort on the Orinoco. Here we have a picture of exactly what was passing in the Essequibo itself at this very time.

Lord Russell. — At this time, war was declared between France and Holland.

Mr Mallet-Prevost. — In 1686, yes.

At page 62 of this same volume, and relating to the year 1689, is a statement as to the actual military strength at Essequibo. I read from document No. 60 on that page.

“ The French are making a strong-house in Barima; they come there often with 3 or 4 barques to traffic with those hostile Caribs, and threaten soon to come and pay us a visit. We are now, thank God, in a condition to resist the enemy, with our 40 able-bodied men, all strong negroes, in this fort with a thick stone wall and heavy palisades a foot thick erected outside against the wall. But the great scarcity of provisions forces us to let ten or twelve men seek their sustenance outside of the fort, down the river, where they also serve as a lookout watch ”.

And it is significant in this connection that so far as we are enabled to make any comparison between the strength of the Dutch in the Essequibo in these years and the strength of the Spaniards in Santo Thomé, we find a reference in the first volume of the Appendix to the British Case at page 153 to a document under the date of the year 1662 where it is stated that Santo Thomé and Trinidad have 140 residents and 100 men capable of bearing arms. That statement is made, coupled with a statement that the Spanish forces are weak. But here we have the facts. On the one hand 100 men and on the other 40, and it is to facts that we must go and not to the mere expressions of opinion as to relative weakness and strength which may be made by the man who happened to write at the time.

Of course during these early years, there was not any great military strength in either colony and a comparison so far as it is possible to make it between the two, will always show to the advantage of Spain; but they were both small at that time and it was not until a few years later that Spain began to grow and then grow in importance, — I mean, the Spanish settlement. The Dutch so far as their military strength is concerned kept more or less the same, as I shall show from various extracts to which I will refer throughout practically the whole Dutch occupation. In the year 1691, on page 63 of this same volume, in document No. 63 we have a number of Muster Rolls of the Company's Servants in Essequibo, and it shows that at that time the Company could count upon 43 men only; and then passing on to the year 1700 there are a great many most significant extracts which might be read, but which I shall not read, from the Official Diary kept during the years 1699 to 1701, extracts which throw a great deal of light upon what must have been the very petty character of the colony at that time. There is one, for instance, which I have now before me. It is taken from page 120 of the Appendix to the British Counter Case, opposite to C and E. I will not trouble the

Tribunal to turn to it, but it is an entry, and there are dozens and dozens of them, scores of them. This is one under October the 26th:

“ Shortly afterwards the Commandeur, together with the above-mentioned gentlemen, returned here, informing us that the Company's gardens upon the plantations “ De Hoop ” and “ Poelwijck ” had been found in a good condition, but that he had obtained little fish. Towards evening the free planter Mr Matthijs Thierens arrived here, and remained to keep the Commandeur company until the 5th bell after the setting of the watch when he again departed. Shortly before that the Lieutenant had also set out down the river in a canoe in order to poison a certain creek named Parika. The carpenters as before. ”

Such a record as that could not be written of any great Company; it was a little Company, it was struggling at this time, and these references show that that was its natural character. It is impossible to attempt to magnify this into a great and growing colony that needed 100 miles of territory in order to meet its wants. There are other references all along this official diary; I have a number here which I shall not read, but simply give the reference to. On page 120 opposite C and E, page 122 opposite C and F, page 123, A, B, E, and F, and many others: and about this time as is recorded in the first volume of the Appendix to the British Case on page 123 at E and F, the colony for purposes of defence was divided into two districts, the plantations lying in the River Massaruni comprising the one and the plantations along the Essequibo comprising the other. I have here a map which shows, in the year 1706, a few years afterwards, practically the extent of this colony and its plantations, (it was produced), and I will trouble the Tribunal to turn to the 7th volume of the Appendix to the British Case for a moment to see a statement as to what the colony was in the year 1701, on page 152. We have there a brief enumeration of all the Company's servants and where they are stationed, also of the free settlers, all Europeans, how far they are from the fort and from one another, and we have a statement there showing that there were 67 persons. It gives the location of some of them, some 8 or 9 miles down the river, some 9 miles, above, and also those at Wakepo. The Postholder at Wakepo is also included here and also in Demerara there are two, 25 miles from the fort.

Sir Richard Webster. — Those are the Company's servants?

Mr Mallet-Prevost. — Yes; those are the Company's servants, and it also states at the head

“ also of the free settlers, all Europeans ”.

Sir Richard Webster. — Those are not given in the extract.

Mr Mallet-Prevost. — Well, it is unfortunate they are not. I have

no other information except what I have here and I am speaking from this. If I have been in any way misleading it is not my fault.

Sir Richard Webster. — It is not a question of misleading. There is a great deal more information in the Diary about the free settlers.

Mr Mallet-Prevost. — It is a great pity that it was not presented here. I am now speaking from the evidence that I have before me here. There may be others, but we have here what is practically more than the military strength of the Company, 67, because it included the servants of the Company and those servants included all of its military servants, its soldiers. Then we have also with regard to the year 1703 a statement from the first volume of the Appendix to the British Case which I shall read. It is on page 225 opposite E, and this is from the West India Company to the Commandeur at Essequibo :

“ And, in order to prove that we have the growth and advancement of the aforesaid Colony at heart, we have resolved to send you one Guillaume de Bruine of Namur, who is skilled and experienced in the working of quarries and rocks, in order that, in pursuance of the plan of Mr. David Sandra, sub No. 6, he inspect the waterfalls and examine whether it might be possible to remove the cliffs and rocks — ”

and this is the very earliest mention that we have of possible mining operations —

“ which obstruct the water there, or at least to make such a channel therein that the water would flow through in such wise as to make the river navigable from above, inasmuch as it is claimed that above the falls is to be found the finest and most fertile land that one could wish. ”

This is the first of many references to which I shall call attention where it is clear that but for those falls in those various rivers there would have been a growth of the colony in that direction; the land above the falls was spoken of as being land that was even better than the land below, as land which would have been occupied but for this barrier, that existed, and efforts, but ineffectual efforts, were made to do away with this barrier.

“ But whereas the aforesaid miner is not well acquainted with the nature of that country, and much less with that of the rivers there, it will be well that you proceed thither with him, examine and thoroughly consider everything, and send him back home by the first ship if he can be of no service there; but, if he can be of service, you must keep the aforesaid miner there, and send us at the earliest opportunity a written report of your results. ”

And then there is a postscript at page 227 D which throws light upon the military strength of the Company :

“ The soldiers last sent, Y. H., have been very bad and incapable. I therefore earnestly beg Y. H., with the next ship coming here, to be pleased to provide me with some brave fellows, and to make up the number of the Company's servants in this Colony to 100 heads, without which these rivers will not be easy to protect against attack or revolt of the negroes or Indians ”.

The idea in the mind of the Commandeur being protection and not attack upon Spanish possessions, hundreds of miles away. Going back for a moment to the seventh volume, page 153, we have a statement of this same year 1703 which shows that in all 72 men, scattered far and near, are those that form the body of servants of the Company in the year 1703 and it was that 73 that the Commandeur was anxious if possible to bring up to 100 men, a dream that was not realized. In 1704 at page 217 of the first volume is a document to which I shall refer, opposite F, at the bottom. The first part of this is a letter from the Commandeur to the West India Company. It refers to repairs at the fort of Essequibo and then at the top of page 228 he says :

“ Inasmuch as the Company's plantation Poelwijk was in need of being transferred to another place, because there is no longer any fit ground near it, I have begun to transfer it to above the falls, where there is very good ground ; I hope this may be successful and increase the profit of the Company ”.

This is one of two references which we have with regard to moving any plantations or with regard to any plantations existing above the falls in the Cuyuni. This first is a project which the Commandeur had in mind, but which was evidently not carried out as we can see by the map which is on the wall. Poelwijk is on the Masseruni and this is a map of 1706, a reproduction on a large scale of a map in the Venezuelan atlas. It shows Poelwijk here on the falls in the Masseruni. In the year 1704 we have another muster roll showing the total number of soldiers, 74. That will be found in the seventh volume of the Appendix to the British Case pages 154 and 155. In the year 1707 we have a first reference to the possible development of the indigo industry at page 229, volume I. This matter of the indigo is a little important because in subsequent years when Storm van's Gravesande came to search up all the grounds upon which he could possibly make any claim to the rivers of Cuyuni and Masseruni he mentioned, above others, the existence of the Company's indigo plantation in the Cuyuni. Here, in the year 1707, we find the first reference to this, at page 229 of volume I, and down opposite F is this statement :

“ And also there is the means to bring any land, whether above or below the falls, under indigo cultivation, since in the transport it is subjected to no tricks like the sugar, and it is more particularly to be noted that it can be stowed into a vessel

capable of descending the falls, all which foregoing, Y. H. will be pleased to favour, as tending to the profit and the further building up of this Colony."

And in the earlier part of this letter he refers to the fact that if the indigo succeeds the slave trade would have a considerable stimulus and this and other references show that the slave trade at this time was beginning to attract attention and it subsequently became a most important matter for the Company to get slaves to work its plantations.

Mr Justice Brewer. — That was in Cuyuni?

Mr Mallet-Prevost. — The indigo plantation was in the Cuyuni as subsequently located. This was an endeavor to utilize the Cuyuni. The sugar they could not plant above the falls but indigo might become important and thus the falls would not form the obstacle they would to the sugar.

At page 230 of the same volume, Document No. 140, there are some extracts which I desire to read. At C:

"As regards the importation of slaves for this river, and as the late Commandeur Beekman has written about it, I should not yet be able to give Y. H. any special counsel, seeing that in this grievous war-time private individuals have no desire to cumber themselves with more slaves, which would not be advisable, since the enemy can at all times enter the river and set fire to and ruin the greatest part of the plantations, because it is impossible for the fort to protect them, as it is situated too far off."

Here we have the first indication of the movement of the colony down the river and Kijkoveral being now too far off to protect the plantations that were further.

"In fine, Y. H., it is my intention to break up the Company's plantation named Westersouburgh so soon as the sugar which now stands in the fields be cleared off, and to distribute the slaves and the animals as well among the other three until such time as I shall come to understand from Y. H. whether I shall make of it a plantation in Cuyuni or Mazaruni, where there is land enough, as then I should be able to have it under my protection.

And here is a phrase which is repeated and somewhat modified in subsequent years which I want to call attention to "*in Massaruni*" and "*in Cuyuni*." Later on we shall find these referred to as the Upper Cuyuni and Upper Massaruni and yet a great many of the allegations which have been made by my learned friends on the other side as to the existence of a trade in the upper part of these rivers, up near the mission savannahs and elsewhere, are based simply on the use of such language

as this — the fact that so and so went to the Upper Cuyuni and went to the Upper Massaruni; and I want to point out as I read these extracts what these names meant as they were used in this colony. Here we have to begin with “ in Cuyuni ” and “ in Massaruni ” used as designations for about the mouths of these two rivers. Also down opposite F :

“ The enemy being gone, I have consulted with the Council what would be the best course to adopt to make this Colony secure, were it practicable, against the enemy, whereupon the most were of opinion that a stronghold might be made on Stammers Island, others again on Vlaggen Island — ”

which is Flag island further down the river —

“ or even above this on Paepen island, whereon I then asked whether such a stronghold could be protected by a small number of people. They gave me a negative answer, but added that they were of opinion that this fort should be stripped of its people — ”

that is Kijkoveral —

“ and that all should betake themselves thither, to which I have not been able to agree, and am also determined to hold and defend the present Fort Kijkoveral as long as is possible, or until Y. H. should be pleased to give instructions to fortify the river lower down as far as practicable, which, in fact, is highly necessary in this critical conjuncture, because without that I consider the greater number of the lower plantations lost before one can receive the news that the enemy are in the river. ”

Chief Justice Fuller. — “ Thither ” : Where was the Commandeur then ?

Mr Mallet-Prevost. — The Commandeur was at Kijkoveral. The seat of the administration of the river at Kijkoveral was not moved for some years yet. A statement of this kind at this time is most significant in view of the allegations made by our learned friends, that through all this period, and they make no exception of war or anything else, that the Dutch were exercising political control along the whole coast to the Orinoco and all along the interior away up into the mission savannahs. In view of those allegations, passages of this kind are most significant.

In the year 1710, page 233 of this volume is a reference to the condition of the colony at that time. They were beginning, as the Commandeur said, to get again into a tolerable state. He speaks of five factories which are in good order. They are sugar mills, of course, and small affairs naturally and in 1716 the Commandeur got permission to build a new Government House on the main land at Cartabo point. The house

was dubbed “ near by ” and in speaking of this in 1770, when Hartsinck wrote, it was entirely in ruins and that part of the river had been completely abandoned, and Hartsinck spoke of it as a hamlet, existing in the year 1740, which at that time contained some twelve or fifteen houses.

In the year 1722 we have the statement of the engineer Maurain-Saincterre at page 252 of volume I, E. It is the report of an engineer who comes to the colony for the purpose of seeing what can be done and who reports this to the Company, at the bottom of the page .

“ The ground is even better above in the Rivers Essequibo, Mazaruni, and Cuyuni, than below ; but because they are full of rocks, falls, and islands, and much danger is to be feared for large sugar canoes, this is the reason why up to this time the Europeans have not been willing to establish sugar plantations there. But, since the soil is good, coffee plantations could be established there everywhere, and [the produce] brought with small boats to Cartabo or further. ”

Here we have emphasized the fact these falls, too, act as a barrier to the spread of the colony in the direction of the interior.

Lord Russell : —

“ Many plantations might also be established in the Rivers Demerara, Pomeroon, Waini, Barima — ”

Mr Mallet-Prevost. — I referred to that when I stated nothing was done. I called the attention of the Tribunal to it at that time. I do not wish to repeat where I can avoid repetition.

In the 2nd volume of the Appendix to the British Case at page 3, is an extract, opposite C, which I shall read :

“ The Commandeur declared that diverse and doubtful reports are daily received concerning the Maganout nation, and that attention should be paid to the matter, whereupon it was resolved to send two proper soldiers to the Plantation Nieuw Cortrijk on behalf of the Company, with orders to keep a good look-out, together with the other soldiers, and to be careful with their arms, which have been abundantly given them for defence ; and in case of treason they are ordered to give immediate information to Mr. van der Kaay, as well as to the nearest plantation, which is Oosterbeek, and which shall further be obliged to send immediate warning to the Commandeur, and to give these soldiers a 3 pr. and ammunition, this being considered necessary, since the Maganouts must first pass there if they wish to come by water and injure this river. ”

Again pointing to the fact that there was no pretence that authority was exercised, beyond two men being sent to Nieuw Cortrijk, at that time, if

not the highest, very nearly the highest, plantation on the Essequibo as shown by this map of Maas. Two men were stationed as an outguard and they were expecting the attack in Essequibo. If they heard anything of Indians coming they were to inform the plantation of Oosterbeek and they were to inform the Commandeur. At page 6 of this volume, opposite D, we have a statement which would seem to indicate that if coffee had been tried in Cuyuni it was apparently not a success :

“ We are sorry to be obliged to inform your Lordships that we find the coffee in Cuyuni will not yield a sixteenth part of that which it did last year, and that the shrubs at the corner of Bartica bearing no fruit at all, we fear that our expectations in this matter will not be fulfilled by a long way. ”

And I call the attention of the Tribunal to the use again of the term “ in Cuyuni ” and it speaks of the shrubs at Bartica, showing “ in Cuyuni ” was used to describe the mouth of the Cuyuni itself and that district. At page 6 at the bottom of the page is a document which is important enough to be read in full :

“ Turning now, my Lords, to the matter of the River Essequibo, it is now about two years since I myself with Mr. van der Kaey proceeded up the river to find out whether it was not in any way possible to successfully set on foot some enterprise up above the falls, but we found the river very dangerous, so that in some places we were obliged to be drawn up in a corrial through the falls, with great danger to our lives. It is absolutely impossible to navigate the river with large boats, such as canoes, and it is equally impossible with barques, because above the plantation Nieuw Cortrijk there is fall upon fall. ”

I have pointed out where Nieuw Cortrijk is located.

“ With regard to the land out there, it seems to me very good, but having inquired how high the water rose in those parts, it was pointed out to me in different places that it rose in the rainy season between 25 and 30 feet, so that nearly all the land is then under water, and there are also many great hills there which are nearly all rocky and very steep at the river side. ”

Here we are speaking of 1727, one hundred years after the Dutch had first gone to Essequibo, one hundred years during which they alleged they were utilizing this territory and exercising dominion and here the Commandeur of Essequibo in 1727 can say :

“ I have also carefully inquired, my Lords, what kind of trade might be done there with the Indians, and have up to the present not been able to discover any other trade but a little balsam which is brought thence, and sometimes a few red slaves. ”

Can it be wondered at when we come to study the subject of trade that we find the record so very deficient? There was nothing to record :

“ To this end two creoles went up the river only last year, who, having been out for seven or eight months, brought very little home. The only profit that this Colony derives from the River Essequibo is that the latter is very rich in fish, and is therefore visited annually both by the Company and by the private colonists for the purpose of salting — ”

and, of course, those fish would come from the lower reaches of the river —

“ to which end two boats have again been prepared for your Lordships, which will be ready to depart in the month of October. I see no profit for your Lordships in sending any man up the river, because I can discover nothing of the savage nation. ”

In the year 1730 we have the only reference to any plantations above the falls of the Cuyuni. It will be found at page 10 and the language which is used, must be interpreted in the light of some statements prior and subsequent thereto. I read from opposite C :

“ On the 29th and 30th September [*i. e.* 1729] I inspected the coffee plantations in Cuyuni both above and below the fall, and found many of the oldest trees withered, and most of them in a bad state, wherefore I ordered the Director Saigné to go and inspect the surrounding lands, and to have a new coffee and cocoa plantation laid out towards the next season in order to see whether it would not be possible to grow the last-mentioned product in Cuyuni (where the ground is best fitted for it).

On the 18th April last I engaged for your Lordships' service one Jan van der Meers, of Ostend, as foreman at the coffee plantation in Cuyuni, at a salary of 12 guilders per month. He has been in all the French and Spanish islands, and coming into this colony about a few years ago he served as foreman with the ex-Councillor Tierens, and he assures me that he can make indigo as well as it is made anywhere on these islands, and I having expressed a desire to see a sample of this, a small piece of land in Cuyuni has already been cleared and sown with indigo, which is growing very prettily :

This statement of the Commandeur that he had inspected coffee plantations above the fall must have reference to the very lowest rapid in that river. When I come to deal, as I shall in the course of the day, with the geography of this region I will show that in a space of some miles there is not one fall nor one rapid, but a great many, a large number named by Schomburgk and other travellers and we have in the

very following year, page 14 B, the statement made by the Court of Policy itself :

“ Concerning the advantages of the trade in the rivers of Massaruni and Cuyuni for the Honourable Company alone, this consists only in red slaves, and the order has been renewed because the veto was one kept up by all former Commandeurs. But most of the Indians having left those parts that trade is now of less profit, except for the oriane dye. The plantation Poelwijk, lying up in the first mentioned river, sometimes buys one or two red slaves in a whole year, but they are mostly children of about 8 or 10 years old, who are bought for about twelve or thirteen axes and choppers, together with a few provisions. The red slaves, too, cannot work together with a black slave, and are mostly used on the plantations for hunting and fishing, the women looking after the cassava for the daily consumption of the plantation. The great number of rocks which lie in these two rivers, and which occasion the falls by reason of the strong stream rushing over them, makes these rivers unnavigable for large vessels, wherefore it is impossible to establish any plantations there, although the soil is very well fitted for it. ”

And in view of that statement by the Court of Policy in the year 1731 the previous statement of the Commandeur in the year 1730 must be interpreted as having reference to some of the very lowest rapids in that river. In 1731 the Commandeur sent a sample of this indigo to the Company and the fact is recorded at page 12, C, of this volume. Then at page 14 at the bottom of the page we have this statement by the Court of Policy as to the indigo plantation :

“ A commencement has already been made today, and a clearing made and planted with indigo, up in the River Cuyuni. ”

Many later references to this indigo plantation (the plantation to which Gravesande years afterwards appealed as a proof of the occupation of this river) show that it was a plantation below the lowest falls. About that there is absolutely no sort of question.

At page 18 is a passing reference which may be taken for what it is worth, opposite C, the letter of the Commandeur in which he speaks of the comparative strength of himself in Essequibo and the Spaniards in Orinoco; he says :

“ The Spaniards are making themselves so formidable by the collection of a considerable number of troops, and we, on the contrary, are very weak here — ”

this is important, Mr President, as pointing out the true state of affairs

there and as rebutting the very rash statements which have been made depicting this as a great powerful colony.

In the year 1738, at page 27 of this Volume, is a statement or an extract in which the words "Upper Cuyuni" are used as indicating really the lower Cuyuni, and a reference is once more made to possible mining operations. The first reference to mining operations resulted in nothing. If anyone was sent from the Netherlands to look into the matter nothing came of it at all. In 1738 the matter is mentioned again and I shall have occasion in the following three or four years to point out what the mining operations were of a certain Hildebrandt sent out for the purpose. Those operations become important like the indigo operations because Gravesande appealed to them afterwards as supporting the Dutch title to this river by occupation :

"Without doubt metals must be here, and I ascribe the unhealthiness which prevails in the Upper Cuyuni, and the green film which is always on the waters there, to nothing else than the abundance of mineral matter in the mountains there; the taste of the little brooks flowing therefrom demonstrate this clearly; but we should require at least two expert miners to discover these. I shall do everything in my power by means of Indians to make some further discoveries."

The Commandeur by using the term "Upper Essequibo" means the Essequibo below the lowest falls and that will be clear from some passages I read almost at once. At page 28, C, we have this statement in the year 1739 from the Zeeland Chamber to the West India Company :

"And our attention has in no less degree been aroused by the Secretary's writing that he is persuaded that minerals are to be found in the mountains up in the River Cuyuni. We know no reasons, moreover, why this should not be so, and have ourselves for many years been persuaded thereof; but the first question is whether he, the Secretary, can find out where work should begin, in order to detect them, and what is his impression of those mountains, whether they are of earth or wholly of rock, in order that the miners, in case we send them —"

and this is a most significant passage —

"we must also know whether, in case this work should be undertaken, you would be in condition to maintain yourself against the natives, if any are there or are to be looked for."

This is a statement of the Company in the year 1739 more than a century after the Dutch had gone to Essequibo and during which century they were supposed to be exercising control through all this region. Here the Company asks the Commandeur in case he goes up just above the falls, and that is as far as Hildebrandt went, if he could maintain himself

against the natives; and yet in the face of that we have the statement he was “ exercising control ” up that river :

“ We shall not hesitate to send you two able miners, if you can offer us a prospect of success, but without that the Company cannot afford to lay out needless cost at great risk, for the reasons adduced by the Secretary for his belief in this matter may be well grounded, and still it might be impossible of execution. ”

Lord Russell. — Is it not a little significant that there is no reference in that passage at all to the Spanish?

Mr Mallet-Prevost. — There are plenty of references to the Spaniards later on.

Lord Russell. — I am talking of this.

Mr Mallet-Prevost. — He is speaking here of something that was immediately about the mouth of the Cuyuni. I will show by reference to the very next document where these samples came from. Some of them came from right about the very plantations of the Company below the falls and yet he has some doubt whether about those places the Governor may be able to maintain himself against the natives. The Dutch had not come in contact with the Spaniards in the interior, except about the horse trade in the year 1700, to which I shall refer later on when that was stopped and they had not gone into the interior and therefore had not come in contact with the Spaniards. This is probably the explanation of it. The Company had been, in its possession of the Essequibo, threatened at one time by the Caribs, when they talked about taking precautionary measures, and by the Maganouts at Cortrijk; showing these Indians were right on them, and it was a natural inquiry for the Company to make, when it was suggested if mining might be undertaken, if they could defend themselves against the Indians.

Now where did these samples come from and what was meant by the “ Upper Cuyuni? ”

Lord Russell. — The expression is “ up in the mountains. ”

Mr Mallet-Prevost. — I will show your Lordship later that those mountains are the Blue Mountains (he pointed them out).

They are marked “ Blauwenberg ”; they are a little above the head of the series of lowest rapids. Hildebrandt went as far as that, but the references I am going to read show the first samples of ore came down from the plantations. At page 28 is a letter from the Commandeur to the Company dated May 20th 1739 and he says :

“ We have the honour to dispatch to your Honours by this vessel a case marked with the mark of your Honours, No. 1, wherein you will find some ores specified in the accompanying list. ”

Now between A and B on the next page we find this :

“ The one which was taken from above the plantation Poelwijk, and is inclosed in compartment No. 1, promises somewhat well. ”

Poelwijk is in the Masseruni at that point (pointing) ; it was the highest plantation; and further on, on the same page, we see the statement that that was the sample which was taken from the highest point. Between E and F :

“ The stones in No. 1, are of the highest of any of these veins. In No. 5 are the stones of the rock which is traversed by the veins. These have the most indications of a silver mine, yet some stones clearly containing in themselves yellow metal argue the belief that gold is therein.

No. 2. This compartment contains stones with which a hill above the plantation Pilgrim — ”

another plantation —

“ is found covered to the depth of 3 or 4 feet. These, according to (our) opinion, are iron, and are not worthy of transmission, but the stones in papers Nos. 6 and 7 found there between give clear indications of another valuable metal, in proof whereof the matrix rock in No. 2 is sent. ”

Then at the top of page 30 —

“ No 8. A piece of ore found up in the chain of mountains of Cuyuni, not actually so high as the coffee plantation. ”

That shows what is meant by the chain of mountains up in the Cuyuni. It was these very falls and rapids that for more than a century had stood there as a barrier to the spread of the Company in that direction. At page 30, opposite D, is a significant passage relating to the year 1739 :

“ As the continuous rainy season since the sailing of “ Den jongen Daniel ” makes the road above the falls very dangerous, it has prevented the making of any further discovery — assuming that anything at all is to be found there. Now that the rainy season is drawing to an end, the second of the Undersigned is getting ready to make a journey with Mr de Vries, shortly after the departure of this ship, to up in the River Cuyuni, to the high mountains here called the Blue Mountains — ”

those are the ones to which I called the attention of the Tribunal a moment ago —

“ for the blue colour and the unwholesomeness of the waters of those rivers sufficiently assure him that the mountains through which it runs must be very rich in metals — of what kind he will as far as possible try to find out. ”

It is at the bottom of page 30.

“ On the 3rd of this month, the Surgeon Hortsman departed with two of the fittest soldiers, well provided with weapons and everything else which was necessary for his projected journey above the falls of Essequibo — ”

and then comes a very remarkable passage —

“ furnished with proper instructions and passports in the Dutch and Latin languages in case it may be necessary for him to avail himself thereof. ”

Now that certainly points to the presence of others than Dutchmen there in that region. The Attorney General has made certain statements as to the Indians speaking Creole Dutch at this time, but I do not think he has gone as far as to suggest they were conversant with latin and I do not suppose these passports were intended for the Indians, and the next phrase shows Creole Dutch had not spread to that region :

“ Moreover, there have been attached to him four able and clever creoles to serve as guides and interpreters with the Indians whom they will pass on this journey. ”

Now we come to the statement of Hildebrandt himself who in the year 1741 went out to the colony and did the only mining that was ever done. It was not mining, it was what we today would call “ prospecting. ” He made several journeys up above the falls and prospected here and there and went back home. That is all the mining the Company did in this region.

Chief Justice Fuller. — May I ask, if I will not disturb you, on page 29.

“ This compartment contains some stones dug just one half quarter above the Honourable Company’s plantation Poelwijk. ” What is “ one half quarter, ” a quarter of an hour? .

Mr Mallet-Prevost. — I do not know what that can refer to, Chief Justice.

Hildebrandt’s statement begins at page 31 and these are reports :

“ I made a beginning of prospecting, the 15th December, 1740, up in the rocks of the Massaruni. I find there, from one side of the river to the other, rough, hard rock in sight, interspersed with wild, uninviting fragments of quartz; and the rock is of this sort for an hour from above the plantation Poelwijk all the way to the River Essequibo. ”

I call the attention of the Tribunal to the way he refers to these various rivers as being comprised under one expedition, in this case the Masseruni and Essequibo. Of course it could not have been far up those rivers. It was near their junction as is shown by this reference :

“ But beyond this there is another [sort of] rock, which extends its strata as far as the Blue Mountain — ”

showing here he was speaking of the three rivers, the Cuyuni as well.

“ I also prospected in the River Cuyuni — not further than a-half hour above the coffee plantation — but found the rock wholly different from that in the River Massaruni. ”

And then a little lower :

“ It is somewhat finer and more subtle than the rock of Massaruni, and has in it much “ katte ” silver, or “ blende ”, which is by no means a bad sign.

Upon the above-named rock, which runs towards the Blue Mountain from the River Essequibo straight across to the other side, to the so-called Blue Mountain, and comes out at the plantation New Walcheren, the rock is red, ”

and so on. And Hildebrandt's statement there (confirmed by subsequent statements of Schomburgk) goes to show the existence of what he calls a mountain barrier; it is an elevation of some kind, how great I am not able to state, but it is an extension of the Blue Mountains across these rivers, these rivers pouring down through gorges they made in that obstruction.

Lord Russell. — Whereabout is the plantation New Walcheren; where is that located?

Mr Mallet-Prevost. — No; we are referring now to some years later, but I think I can give your Lordship where it is.

Lord Russell. — It is rather curious :

“ Upon the above-named rock, which runs towards the Blue Mountain from the River Essequibo straight across to the other side, to the so-called Blue Mountain, and comes out at the plantation New Walcheren, ”

but do not trouble to find it.

Mr Mallet-Prevost. — I do not think it is located anywhere, I have a list of those I have been able to locate and that is not among them. It might possibly refer to the island itself. At the bottom of page 187 of volume I, opposite F, is a

“ Resolution adopted by the Commandeur and the planters in Rio Essequibo as to the erection of a redout, or strong-house on Stamper's Island, otherwise New Walcheren ”.

If it refers to that then it would point to this fact, that the Blue Mountains which come down here must have some spur that goes off opposite to this plantation and his prospecting was limited to this region.

Mr Justice Brewer. — He made a circuit.

Mr Soley. — The spur is put on the British map.

Mr Mallet-Prevost. — That must be the explanation ; coming right to the west bank of the Essequibo itself.

Now we have a rough rock up in Masseruni half an hour above the plantation Poelwijk, then :

“ In the aforementioned River Cuyuni, a half hour above the coffee plantation, I opened a shaft (No. 3) beneath a high hill. ”

At page 32 there are further statements by Hildebrandt and these are most interesting because they give an account of his expedition over the Cuyuni falls and rapids :

“ Began my journey up the River Cuyuni in order to examine the high mountains above. ”

Then :

“ Took with me on this journey the miner Johannis Schols and the miner Falenteijn Ieske, also the provisional miner Christofel Cramer, 13 slaves, and an old creole for guide through the difficult falls, also a housemaid. The same day ate breakfast with my people on the indigo plantation — ”

that is the first statement that we have where the indigo plantation was ; later on it is referred to as being below the lowest falls —

“ and then pushed on my journey to beneath the great fall, called by the Indians Ematobo. ”

That is not put down on this British map. I shall endeavor to identify these afterwards in dealing with the geography :

“ Reached there safely in the evening at 6 o'clock, and stayed there over night. The whole way I also examined the rocks as much as possible. ”

Then further down : “ While my people carried the things to above the great fall — ” A great deal has been made, in dealing with the coast region, of the fact there is no communication between the Barima and Amacura, inland, and it is necessary to have a portage there to go from one to the other. I call attention to this and not only the portage but the number of portages there have to be.

“ I meanwhile washed the sand and examined the rocks, but found nothing of lodes ; also found nothing [in] the sand washed. When the things were again loaded in the boat I again came to a difficult fall, where I ate my midday meal and had again to have the things taken out of the boat and the boats dragged over again ; this done, went on to a fall named Awaroutaru, and

having passed it stayed over night at an Indian path two nights. ”

Then on the next page, opposite A : “ After sending the letters overland to the indigo plantation, ” showing the choice of an overland route to the river route :

“ Broke camp again and continued my journey, and through God’s blessing safely passed all the difficult falls. So at 11 o’clock I came to above the great island named Pavomba and there landed, and examined the rocks with the miners I had with me.

After prospecting above the so-called Island of Pavombo I travelled the same day up to a creek named Tiboko-Eykoeroe, which comes running from the foot of the Blue Mountains. ”

That shows how far he had gone in that time :

“ There I had a tent of leaves put up in the heavy rain ; and it rained also half the night through. ”

Then opposite F ;

“ In the morning at 6 o’clock left the place where we had stayed four nights, at the creek Tiboko-Eykoeroe, and came to a great fall named Tokeyne, where we had great [er] trouble to get up than we had yet had anywhere, the height of the above-named fall being $4\frac{1}{2}$ fathoms— ”

and it is said that this river is navigable —

“ If I had not had the luck of six Indians, who showed themselves helpful in dragging over my boat, I should have found it impossible to get up ; and I kept these Indians by me still after they had helped me, in order to show the way further through the many islands and two other difficult falls, one named Simierie and the other Motoesie. ”

Mr Justice Brewer. — Where is Tokeyne?

Mr Mallet-Prevost. — I do not think it is possible to identify that fall.

Mr Justice Brewer. — It is not spelt in the same way, but I think in 10 K is something like it.

Mr Mallet-Prevost. — No, that is utterly impossible. He had only just got above the Blue Mountains and that is a long distance up, which it would have been impossible to go in that space of time. The length of journey up there — I shall refer to the testimony of a large number of people showing the length of time — it is impossible for him to have got up there. It was in the immediate vicinity of the Blue Mountains. At page 34, opposite E.

“ I also inform my Lords and employers that on the 23rd April I began the journey to the Blue Mountain, in order to examine the mountains. Accordingly, I made a beginning above the indigo plantation at the first small fall — ”

that is definite statement as to where that plantation was —

“ but found only unpromising rock. Then I went higher up to a creek called Moroko-eykoeroe, and up to this point I have explored as carefully as anybody could do, round about the Blue Mountain. ”

That shows it was in that immediate neighbourhood, that his excursions were :

“ I have, indeed, found beautiful lodes, but it will take severe labour to work it, since the mountain is covered with heavy iron rock as far as this aforesaid creek, which lies full four hours above the Blue Mountain. ”

That shows the distance above the Blue Mountain only four hours :

“ I have found at this place a beautiful copper vein which is worth going on with. ”

Then at page 35 opposite D :

“ Hildebrandt, the Director of the miners, has in the meantime made several requests to go and work up in Cuyuni — ”

I call attention again to that phrase —

“ at the place from which he brought the ore specimens which were sent to you by the ship “ Den Jongen Daniel; ” but it being impossible to grant him this because there were grounds to fear that his slaves, already thoroughly disgusted with the mining, would follow the other runaways, this request had provisionally to be denied him. ”

There were one or two other excursions by Hildebrandt up that river, but that was the practical result of all those. Nothing was done. At page 36, at the bottom of the page, we have some further statements of Hildebrandt in the year 1742 :

“ In the afternoon, at 2 o'clock, commenced my journey to the Blue Mountain, and went no further than the indigo plantation, and there spent the night.

Thursday, January 11. — Broke camp again in the morning, and came to above the first great fall, and there spent the night, and had great discomfort that day.”

Then the top of the next page :

“ In the afternoon, at 3 o'clock, came under the second great fall, and saw almost no chance to get up, so was the water swollen, which in my former journey I could not get through, so that the additional Indians came in very handy, and it was dark by the time that we had the two boats up above. ”

And then opposite C on the same page :

“ In the morning, at 7 o'clock, I went overland, and came up with my men beneath the first great fall at 2 o'clock in the afternoon; and when my men had eaten, I had the things from the boat carried up above, and the boat drawn up, and when it had been loaded again, set out and came to under the second great fall, at 8 o'clock in the evening, and stayed there over night.

Monday, February 5. — This morning, at daybreak, I had the things carried around the fall, and the boat dragged up, and when she was loaded again, set out, and came to my mine at 11 o'clock. ”

And then on the 28th :

“ Set out again in God's name for the Upper Cuyuni; ”

and then below E :

“ Broke camp again in the morning in God's name, and continued my journey, and came in the evening, at 6 o'clock, to the great island, full an hour and a-half below the great fall, and spent the night there.

Friday, March 2. — Set out again in the morning early, and came, at 9 o'clock, under the second great fall, and had the things carried overland and the boats dragged up and loaded again; ”

And then on the next page under March 24th, C :

“ In the morning the three slaves, with the four Indians whom I had sent on the 15th of this month down the river to fetch bread, came overland through the bush; ”

showing how little itself the river served as a means of communication when it was possible to get through the bush :

“ I awaited the Indians in the morning till 9 o'clock, but there came no Indians, either to bring bread or go down stream with me, so I set out with nine slaves, but the water was higher than I had yet seen it, and I passed the falls with great danger, but just before reaching the indigo plantation I ran on a rock

with the boat, so that a cask was thrown out and broken and a hole made in the boat. ”

And then under May 1st he again speaks of the “ Upper Cuyuni ” and so on. On May 5th of the “ Upper Cuyuni ”, on the 11th of May “ Upper Cuyuni ”, on the 16th of May “ Upper Cuyuni ”, and at page 39 opposite E :

“ Before my departure had Mr Bate brought home; arriving at the indigo plantation, ate our midday meal, and afterwards went overland as far as the still water, and spent the night for the first time in the station which I have had made there in order to store in it all sorts of goods and ores which must go overland. ”

And then just above F :

“ Early in the morning I looked out a suitable place where I could best get to from there overland, in order to make a station for storing ore and other commodities of the Company, and also at the same time to make a path overland in case we should have anything important that might come to grief in the little falls which lie above the great fall to the number of two. ”

And at page 40 we have the last of Hildebrandt, opposite C :

“ So I gave orders to make another small path through the bush, to be used by men, so as to escape the great danger of the falls, and later to transport other things by. ”

That was the only effort that was made by the Company at mining and it was limited.

Lord Russell. — What do you indicate as the highest point?

Mr Mallet-Prevost. — Immediately above the place where the Blue Mountains would reach the river, my Lord.

Lord Russell. — Can you give it a name?

Mr Mallet-Prevost. — I should say a very short distance above the Paruca Mountains where the word Blue Mountain is written and if extended would reach the river. His mining was about there. On one expedition he went four hours above. I ought not to call it mining; it was prospecting, but such operations as were carried on long after that time were not higher than the Paruca rapids but probably lower.

Mr Justice Brewer. — Let me call attention to an extract at page 39, E.

Sir Richard Webster. — That is where we think he got the still water he describes as being gone through opposite the River Amacupa. We think that is the place.

Mr Mallet-Prevost. — Yes; it is practically the same.

Mr Justice Brewer. — He speaks of the big island and of arriving at the indigo plantation above that.

Lord Russell. — I do not fix this yet.

Sir Richard Webster. — It is the middle of M 10.

Mr Mallet-Prevost. — Your Lordship sees the words “ Dutch Post ” 1766, and Tonoma Rapids, and then above that Paruca Rapids and then above that Amacupa.

Mr Justice Brewer. — Does not this suggest there is an indigo plantation there?

Mr Mallet-Prevost. — No; that was below the lowest falls. He refers to the indigo plantation as the first place he goes to when he goes up the river. To which passage does your Honour refer?

Mr Justice Brewer. — On page 39, E.

Mr Mallet-Prevost. — “ On Thursday, July 18th ? ”

Mr Justice Brewer. — Yes.

Mr Mallet-Prevost. — “ Before my departure had Mr Bate brought home. ” This is not a consecutive diary. The one before is June 19. He was going up and down. Now —

“ Before my departure had Mr Bate brought home; arriving at the indigo plantation, ate our mid-day meal. ”

that is to say, he departs from Kijkoveral and goes up and the first place he comes to is the indigo plantation, —

“ and afterwards went overland as far as the still water and spent the night for the first time in the station which I have had made. ”

Going up the first point he comes to is the indigo plantation. He refers to the indigo plantation in a number of passages I read and it is also referred to in subsequent passages as being below the lowest fall.

Chief Justice Fuller. — He says on page 37, on February 28th, he set out in God's name — I do not know how early he got up — and he came to the indigo plantations at half past 9 o'clock.

Mr Mallet-Prevost. — Yes; it was only a short distance above the starting point Kijkoveral. This is the only reference to any mining and it is important because of the graphic and detailed information Hildebrandt gave us of the lowest falls of those rivers and the difficulties of getting over them; and it is clear why that was the plantation and why the Company never extended in the interior beyond tide water.

At page 42, to go on with the history and other incidents, opposite F, is a paragraph which is significant. It is a statement of the West India Company and it is to this effect :

“ It surely would be reasonable for the Company to enjoy 5 per cent. on the exports of syrup and rum; it were even to be wished that we could prohibit one stoup of those articles to be

exported anywhere but hither. But, because we fear that the Colony cannot yet do without the English and those of Orinoco, on account of the slight traffic from this country to the River Essequibo, we as yet do not venture upon a prohibitory resolution. ”

showing the dependency of the colony as yet upon outside assistance and not only on outside assistance but upon what they got themselves from the Spaniards in Orinoco. That was in the year 1744. In the year 1746 the surgeon of the colony asked for the deserted stubble land in Cartabo. That is the 2nd volume, Venezuelan Case, at page 96, and is an indication not only that the colony was moving down from the interior to the mouth of the river but the interior was being deserted. We shall find many references to this. The first is the 2nd volume of the Appendix to the British Case, page 55. At C, we have this statement :

“ [We have the honour to report] that, in order to comply with your salutary intention, we caused to be posted everywhere the announcements of the sale on the 8th January last, of the burdensome and unprofitable indigo plantation. But, to our sorrow, we must report that in this matter we could in no way attain the desired end, inasmuch as, although the conditions were arranged very favourably, not one person was willing to bid a single stiver thereon, presumably on account of the great distance and the insalubrity of the River Cuyuni. We had, therefore, to keep it for the Company, to whom, even for bread-grounds alone, it is worth at least 200 rixdollars and more. ”

The colony had by that time gone down to the mouth of the river. Kijkoveral had been left practically deserted and the Commandeur was living at Flag or Fort Island. Here in the year 1748 when the indigo plantation was put up for sale there was not a bidder and the Commandeur himself gave as a reason for that, its distance and that it was far up the Cuyuni. This is in the face of the allegation that this was a colony that needed more territory for itself.

Mr Justice Brewer. — That was when our heroic friend Gravesande was Commandeur?

Mr Mallet-Prevost. — Yes ; he had come in a few years before. At page 66 of the 2nd volume is another significant extract. I read from between C and D. This is a report from Gravesande :

“ Hereby the Colony would attain a flourishing and, in course of time, a formidable state, and the interior (which is unknown) — ”

that is a statement by Gravesande in the year 1750 —

“ could be explored and cultivated, the lands which lie along

the river devoted to growing sugar and rice, and those in the interior to other crops, by which many discoveries could doubtless be made which would bring great utility and profit. For this nothing is lacking but able and industrious people and it is a shame (if I may use the word) for the Dutch, that two nations not to be compared with them for industry, namely, the Portuguese and the Spaniards, who are situated, at the right and the left of these colonies, and who are groaning under so hard, even slavish, a rule, are owners of so many treasures and so fortunate in their discoveries.

For such an undertaking we ought to begin, at first, with not too large a number at one time : 20 to 25 families would be enough at first, and, when these had been there for some three years and thus were able to teach and help others, we might go on with larger numbers.

The reason why so little has been discovered is that the old settlers through rooted habit and those born in the colony through an inborn indifference, so strongly cling to their old way that nothing, not even the convincing reasoning, can tear them away from it, and nothing in the world can induce them to any new undertaking, there being among them no industrious and enterprising persons. ”

And yet, Mr President, this was a colony that had not room to grow and had to stretch out.

Mr Justice Brewer. — What was the date of D’Anville’s map?

Mr Mallet-Prevost. — The first edition is dated 1748, but I do not think it was published really till 1751 ; and the second edition was in 1760. The first reference to D’Anville’s was made by Gravesande, in 1758, the first time he appeals to it on any subject of boundary.

It was in this year, 1750 or 1751, that Gravesande made a visit to Holland. He then received the title of Director-General and Demerara received a Commandeur of its own. So the two rivers continued till 1784, when the Director-General resided in Demerara and Essequibo took the second place ; and finally when the colonies passed from the West India Company to the state the Director-General became a Governor-General and that title was retained. That is anticipating somewhat.

In the year 1758 there is a passage in the 2nd Venezuelan Case Appendix, at page 120, to which I want to call attention :

“ [I regard] the river of Pomeroon as a district bringing no earthly profit to the Company ; and I am, moreover, convinced that, if once we should be so fortunate as to have this river [Essequibo] and Demerara completely settled (which cannot be expected inside of fifty years, for a considerable number, possibly even more than 300 plantations, can still be laid out if

some pains be taken), no one would then be kept from settling in Pomeroon by the fact that there is no bourewey wood left there. ”

This is a statement made in the year 1757 to the effect that the colony had not yet taken up what it had on the river itself and yet it is here represented as a colony that had not room and must grow in every direction. In the year 1760 to go back again to the 2nd volume of the Appendix to the British Case at page 197 is an important extract. This is a statement of Gravesande, between D and E :

“ It being presumed that the taking of the boats was really the work of the Spaniards who came up this river with tobacco and other commodities, I have, at the request of Mr Spoors, supported by the principal inhabitants, sent an order to the Post to let no Spaniards pass this way on any account whatever, except a single one who might be the bearer of letters from the Government. To say nothing of the annoyance occasioned by the loss of two such necessary boats, your Lordship’s two plantations are now without provisions for the slaves, and without any means of obtaining them, the river being as good as closed by the French privateers, one of which, called “ La Minerve ”, Captain Bernare l’Escarpeau, was last week in Demerary for fresh water — ”

and so on. At the top of page 198 :

“ Under these circumstances, no English can enter the river with provisions, and I very much fear that two barques which we are expecting about this time from Rhode Island have fallen into their hands. This would land us in terrible straits. ”

Showing how completely the colony was still dependent on what it could get from the outside and how very inconsistent this state of things is with a supposed control beyond its immediate boundaries. There is a statement in the 3rd volume of the British Case from a Spanish source, Don Jose Diguja, showing the condition of this colony at this time, at page 63. I read from between C and D. He has been speaking of the River Essequibo which gives its denomination to the colony :

“ Two of its islands, formed by the mouths, contain a plantation in each, with some dwelling-houses for the negroes and Indians which each owner possesses; these seem to be small settlements and similar to the estates on the banks of the river. On the third island, which is further to the east, there are about a dozen houses, which serve as dwellings for the Governor of the Colony, the captain of the troops, and the surgeon; a house for the secretary who attends to the interests of the Company; two or three lodging houses, two farms, some warehouses, and

quarters for the negroes of the Company, together with the “ charca ” [? church] or preaching-place. This small number of houses forms the only settlement which the Colony possesses. ”

Mr Justice Brewer. — What is the date of this?

Mr Mallet-Prevost. — That is in 1763 ; and on page 111 of this same volume, opposite E, (this is an enclosure in one of the letters from Gravesande to the Company) we have the only statement that there is about any plantation being above the falls in the river Essequibo though what it means, as to the falls, is a little uncertain here. It says here :

“ Above the first fall in Essequibo a Jew named Moses Isaac de Vries, who has now been dead some years, commenced a sugar plantation, and the cane which was grown there called forth the admiration and astonishment of all the inhabitants. ”

Notwithstanding that admiration and astonishment the falls certainly proved a barrier, for that interior was more and more deserted and abandoned. At page 116 in this same volume, opposite F, is a letter from Gravesande in which he says :

“ I have received a report from the few colonists who still reside in the upper reaches of the rivers that a few weeks ago they had seen a white man with a few Indians proceeding down the falls of the River Cuyuni and proceeding up the River Massaruni. ”

There can be no question as to the use there of the designation “ the upper reaches ” of those rivers. They meant the very mouth of the Cuyuni and Massaruni referring to those that come down one river and up the other. Then again I call the attention of the Tribunal to the strength of the evidence. We hear of the practical desertion of the interior, and the few colonists who still reside in those upper reaches. At page 164 is a statement by Gravesande which points to what must have been his very small available military forces. I read the paragraph between D and E :

“ The desertion of a sergeant and a few men would (especially in time of peace) be scarcely noticed in Europe, but here it is an entirely different matter, our colonies here on the coast having on the one side restless neighbours who cannot long remain still, and on the other side the Spaniards, who have already given us and still give us so many reasons for suspicion that we can really not be careful enough. ”

And then at page 176, referring to some of these desertions and to his available forces we have the following, opposite E.

“ It is of the utmost necessity that we should have Protestant soldiers. I am certain that your Lordships are convinced

of the necessity of this, but how little hope there is of getting them I see from the last shipment which, with the exception of about four, consisted of none but Catholics, and from your Lordships' letter I can only conclude that your Lordships have been greatly deceived.

“ This ties my hands completely, and nothing can be done at the Posts, which are daily exposed to pillage. ”

Then at the bottom of the page :

“ The garrison of the two rivers ought to consist of at least 100 men (as it does in Berbice) — ”

let me call the attention of the Tribunal to the fact he speaks of the year 1768 —

“ but if they are to be Catholics it would be better to remain as we are, and even less, since, the proximity of the Spaniards is a standing danger of desertion, and if the opportunity were embraced by many at once it would have fatal results for some plantations. This was very much feared when those seven deserted together, and we do not dare to send any one after them, not only on account of the smallness of our numbers, but because it is feared that those who are sent would join the runaways, especially if they have a good boat and provisions. ”

Yet at this very time we have the allegation made by our learned friends on the other side that this very Commandeur was exercising an exclusive political control over trade and other things, over regions hundreds of miles away, and this when he did not dare to send any one after seven deserting soldiers.

Will the Tribunal kindly turn to the 2nd volume of the Venezuelan Case, page 207. I read from the 3^d paragraph :

“ Firstly, as for the soldiery maintained by us for the protection of the colony — ”

this is a statement made by the West India Company —

“ the number of those present in the colony (according to the so-called muster roll drawn up on the last of December, 1768, and sent to us, copy of which we have the honor to enclose herewith) is now unusually small, the garrison having been so greatly weakened through discharge of several who had served their time, through the death of others, and the desertion of many, that no more than thirty-nine common soldiers are actually available. Adding to these the Captain, Lieutenant, Commandant, the Adjudant in command of the look-out watch in Demerara, two sergeants, five corporals, one drummer, four

postholders and three byliers, it makes in all fifty-six men. This in truth not very considerable number is in great part due to the incredible trouble which we have for some time had to take, ”

and so on.

It is worthy of note (I mention it only in passing) that as far as it is possible for us to make any comparison at this date of the military strength of the Dutch in Essequibo and the Spaniards in Orinoco there is a document in the third volume of the Appendix to the British Case, page 42, opposite D, in 1763, where it is stated that at Santo Thomé there were 100 persons on the staff of the fortress and 58 militiamen, 158 soldiers; while here on the River Demerara and Essequibo we have 56 soldiers; and, in the fourth volume of the Appendix to the British Case, there were four companies of veterans, three of infantry and one of artillery of 74 men each making 296 men, and besides those companies of militia it does not state the number. That is in Santo Thomé. In the fourth volume of the Appendix to the British Case opposite B and C, pointing to anywhere from 400 to 500 men at that time under the direction of the Governor of Santo Thomé, and here in the year 1769 we have this statement by the Dutch Governor showing in all he had 56 men. I know the impression left here that Spain was utterly wretched all of this time, a few isolated passages have been selected and I do not think very fully interpreted, and the impression has been left the Dutch were a great powerful spreading colony with plenty of reserve behind and soldiers, and yet when we come to these facts 120 years after the Treaty of Münster, the Dutch Governor had 50 odd men at his command. At page 214 of this second volume of the Appendix to the Venezuelan Case is another statement.

Lord Russell. — Will you give me the exact reference to the passage you read.

Mr Mallet-Prevost. — I shall be glad to read it. It is page 197 of the fourth volume of the Appendix to the British Case.

Lord Russell, — Thank you; but you need not trouble to read it.

Mr Mallet-Prevost. — Then page 214 of the second volume of the Appendix to the Venezuelan Case, document 279 there is this statement, two years later, showing that even this force of 56 men had gone down.

“ If we had here now such a garrison as in Berbice, one could make arrangements to welcome these pirates fittingly. If I could only detach 24 men, together with some Caribs, I would teach them to undertake such exploits, but that many capable men I have not in all. ”

In 1769 the Dutch Governor did not have 24 capable men at his command. Such passages do not require any comment. Then in the fourth volume of the Appendix to the British Case we have some more

along the same lines, at page 13. It refers to the year 1769, opposite C.

“ The said Owl being narrowly examined by me through the medium of a very good interpreter — ”

this Owl was a Carib from Barima, and speaking of the year 1769 it says :

“ The said Owl being narrowly examined by me through the medium of a very good interpreter, told me that the Spaniards in Barima, having been reinforced by another vessel, had at last attacked the Caribs themselves, captured several of the same, carried them off, burnt their houses and ruined their plantations; that they continued to make raids all around and along the sea coast, and that they were making preparations to come to Pomeroon, and that they said that when they had finished there they would come to Essequibo and attack the plantations and even the fort itself.

I regard the latter as a vain Spanish boast, but they are quite capable of doing all the rest.

Things have now actually reached such a stage that we can return violence with violence, but is it not a sad thing, my Lords, that we have such a weak garrison and not six men among them upon whom we can place the least reliance? To send a small detachment of twelve or sixteen men down would really be to *risquer le tout pour le tout*, for if they were all disloyal, as is only to be excepted from Frenchmen and Catholics, and went over to the Spaniards, all would be lost, because not the least reliance is to be placed upon the citizens ”.

This was the condition of the Dutch Colony.

“ So that, since the outlook is daily becoming blacker for the Colony, it is high time to make some provision, and as there is great danger of total ruin it is highly necessary that powerful and speedy measures should be adopted to prevent the same.

I asked the Carib Owl this morning whether the Caribs were no longer men, and whether they had no hands with which to defend themselves, whereupon he replied, “ Indeed, they have ; but the Spaniards have guns, and we only bows and arrows. Give us rifles, powder, and shot, and we will show you what we are. ” Even had I been inclined to do so I could not, having no further supply of these than just sufficient for the garrison ”.

If I had made such a statement as to the condition of affairs in Essequibo at that time it would be said it was the statement of an advocate. I am reading right here from the private correspondence of the Dutch Governor at the time showing his pitiful condition, and yet this is the man represented as overshadowing the Spanish force, exercising control far and wide along the coast, and hundreds of miles into the interior.

There is another passage at page 105 of this volume opposite C, another statement by Gravesande.

“ The very dangerous condition of the Colony which has been and still is on the brink of total ruin, compels me to report the same to His Serene Highness as speedily as possible, which despatch, being inclosed, I take the liberty of humbly requesting your Lordships to forward to him at once. ”

That is in the year 1772.

Mr Justice Brewer. — That is about the last of Gravesande?

Mr Mallet-Prevost. — Yes; and then in 1773; at page 120 of this volume, E; this is a statement from Brown, the Fiscal in Essequibo to the West India Company.

“ With regard to the first, I can assure your Lordships that there are no more grounds fit for coffee plantations to be had except in remote parts on the west coast in the direction of Orinoco, and therefore fully two days' sail from the fort. ”

Then lower down.

“ There is still some ground fit for sugar plantations up in the river, but it is all situated very far from the fort and densely covered with wood, and every year new plantations have to be laid out, which entails very great cost and much trouble. ”

Showing how that interior had been deserted, and at page 122, opposite A, we have this statement of the Director General :

“ It is now an opportune moment for closing the Court, because there are no longer any grants of land to be made ; no one will ask for lands in the upper reaches of the river — ”

we know now what the “ upper reaches ” means —

“ and most of them are already annexed as timber grounds for the plantations below. ”

And, following in a chronological line, there is a passage I shall only refer to, it is not necessary to turn to it, in the Appendix to the British Counter Case page 364 where a petition was presented to the Court of Policy in Upper Massuruni, by one Hecke, which are lands of same of the abundant plantations below the falls.

At page 162, volume 4, is another extract relating to the year 1776; the top of the page.

“ Yesterday morning there deserted from the Fortress Zee-landia the sergeant, corporal, and two private soldiers out of the guard, taking with them four muskets and a good quantity of ball cartridges, with four other soldiers who were not part of

the guard, making a total of eight persons, as also a Jew named Simon Polak, who was imprisoned in the lock-up, and whom they set free. ”

And lower down opposite C.

“I deem it to be my duty to give your Honours notice hereof, in the first place, that your Honours may have information thereof, that through this the corps of military is greatly weakened — ”

the desertion of 8 men “ greatly weakens the military corps ” of the colony —

“ and it will thus be necessary to send out a new reinforcement, since the number of privates, excluding officers and under-officers, reaches not more than forty-five men. From the accompanying list your Honours can perceive the entire state of the corps. ”

Now just in connection with this passage about this time let me call attention to one passage in this same volume which relates to the condition of the Spanish, at page 148 F, at the bottom of the page. This refers to these same years and is a report of the Council :

“ Afterwards, in a letter of the 20th March, 1773, the said Governor rendered an account of the increase of that province, from the year 1766, in which he took possession of his command ; and as shown by the statement and return, which he annexed, the said increase consisted in 43 settlements of Spaniards and Indians, and of 8,558 inhabitants, 712 houses, 2,899 farms, and 131,963 head of cattle and horses ; crediting also, by a certificate, which he inclosed, countersigned by the Royal officer of that Treasury, the receipt therein of 38,803 pesos ; which progress he brought before your Majesty’s notice to show his eagerness that in that vast dominion the favourable Resolutions which its natives deserved from your Majesty’s Royal Grace might become effectual, ”

and so on ; and about the same time we have the statement of the Dutch Governor that his whole force, excluding officers, is 44 men.

Lord Justice Collins. — On the brink of ruin.

Lord Russell. — Where is that settlement ?

Mr Mallet-Prevost. — It was the Province of Guiana under the command of that one Governor. Whatever it was, I point to it as showing the strength there was at that time, not in the region itself, but in Santo Thomé.

Lord Russell. — Do you suggest these settlements are between the Orinoco and the Essequibo ?

Mr Mallet-Prevost. — I thought I had said many were and many not,

and I point to them as only evidence of the condition of the Spaniards there, in the same way as when I speak of the Dutch, I have included not what they had between Essequibo and Orinoco, but have included Demerara. I have shown how in the colony outside the disputed territory the Dutch power is to compare with the Spanish power on the Orinoco.

Then at page 166 is a plan which was suggested by Heneman, an engineer and it is interesting to note what his views were with regard to the necessities of the Company. It was a plan which of course was never carried out. The Tribunal will bear in mind what I have just shown in this year 1766, the Dutch Governor had only 45 men. In September of this year Heneman devised this plan by which the Colony was to be thoroughly protected, and at page 169 is a tabulated statement showing the number of soldiers it ought to have, at fort Zeelandia and another 80 and so on, making several hundred altogether. That shows what the Dutch colony needed, and what it would have had if it was possible to give it to it, and with that force it would have been sufficient to maintain itself where it was.

Now what were the facts I have just pointed to? 45 men. And now I point to another document of a later date, at page 175, and see what the Director General has to say. This is all in 1776.

“ I can find no words to depict to your Honours, according to its sad appearance, the state we find ourselves in through the prevailing and more and more increasing desertions, and the courage is altogether taken away from us when we consider that all trouble and attempts to resist the same have proved fruitless. We see on our side no further means to obviate these calamities. Since we have left nothing unattempted. I therefore take the liberty, and deem it my duty, to recommend in the strongest manner our moribund possessions to the paternal care and protection of your Honours, and the more so as we at present have to struggle with many other unfortunate circumstances, among which loss of credit and the low price of our produce are not the least. ”

And yet according to the contention of our learned friends this corpse was so galvanized with strength, it was running out in the direction of the Orinoco, and had not room enough to bury itself in Essequibo.

Lord Russell. — Looking at that document which sets out a great number of settlements and so on, —

Mr Mallet-Prevost. — Does your Lordship refer to the Spanish?

Lord Russell. — On page 149 it is curious that in that same document after giving the extent of the boundaries of Guiana, between E and F;

“ On the north, the Lower Orinoco, the southern boundary of the Provinces of Cumana and Caracas; on the east, the Atlantic Ocean; on the south, the great river of the Amazons; and on

the west the Rio Negro, the creek of Casiquiari, and the Upper Orinoco, the boundary of the eastern and unexplored part of the Kingdom of Santa Fé. That on the confines or limits of the vast region of that province, the French and Dutch have occupied the whole sea-coast with their Colonies; the former in Cayenne, near the mouth of the Amazon, and the latter in Surinam, Berbiz, and Essequibo, 55 or 60 leagues from the Great Mouth of the Orinoco. ”

Mr Mallet-Prevost. — We would put that about the mouth of the Amacura my Lord.

Lord Russell. — That may be. Then a little lower down —

“ that our actual possessions are limited to a part of the Rio Negro, the whole of the Casiquiari, Upper and Lower Orinoco, and the new settlements, which are being founded in the interior of the country, along the Rivers Caroni, Paragua, ”

and so on.

Mr Mallet-Prevost. — Yes; the lower Orinoco is referred to amongst others, my Lord. I do not know if there is any question.

Lord Russell. — No, I draw attention to it, as it caught my eye.

Mr Mallet-Prevost. — Now will the Tribunal turn to page 175. I read from just above E in the first part of this speaking of the running away of slaves which had become a very serious matter. I have just read that; then the next is page 183. This is from the secretary at Essequibo to the West India Company.

“ Next, I beg leave to inquire of your Honours *whether lands which have been granted to any one formerly or long ago, or which have been acquired by purchase or inheritance (some of them once cultivated and others not yet), and are at present not at all under cultivation, can and must revert to the Company.*

“ If so, then the Company has a right to at least three-quarters of this extensive Colony — ”

he is referring there to the river, of course —

“ since there are several planters who hold thousands of acres of land which are not under cultivation. For most of the old planters, as soon as the lower lands were brought under cultivation, transferred their plantations which lay above this fort or Flag Island, brought off all their slaves, mills, cattle, etc., and practically abandoned the old plantations; but, in order nevertheless to retain their right, as they fancy, to those upper lands, they sent thither all their old and decrepit slaves, who can be of no use on the new plantations. ”

Of course it is in this sense I have over and over again used the word “ abandoned ”. I did not mean legal abandonment of the mouth of the

Cuyuni or Massaruni and the old plantations, but for the purpose of showing they were not needed, they did not grow in that direction, there was an effort to grow in that direction which was stopped by those falls and then little by little the colony moved down stream.

“ Thus one finds above this island (which is distant only one tide from the mouth) not one sugar, coffee or cotton plantation except only that of the ex-Councillor S. G. van der Heyden, situated a great tide above this island, at the mouths of the two Rivers Mazaruni and Cuyuni. ”

Chief Justice Fuller. — How much would be a great tide?

Mr Mallet-Prevost. — It is easy to see what he means by that because he says that Van der Heyden's plantation is situate a great tide above this island; and he gives the location of it, at the mouth of the Masseruni and Cuyuni, and as he mentions it there, here was fort Zeelandia and the plantation to which he refers was at Kijkoveral and that is what he meant by a great tide. That is clear from the description which he gives of the localities :

“ In these Rivers, likewise, just as in the River of Essequibo, properly so-called, there can be found not one plantation which furnishes any products except a little cassava bread, and this of so slight importance as not to deserve mention. And this is also the case with the navigable creeks of Bonnasieke, Arriwary, Supinaam, and Itteribisie, each of which has only one sugar plantation at its mouth, and all the other lands in those creeks and rivers are and remain uncultivated; they are only stripped of the best timber, much of which is for the sake of gain exported for the use of the sugar and other windmills on the English islands, which gives not the least profit to the Company, and, as is well known, in course of time our own plantations will lack such wood, or at least will have to pay for it much more than at present; while, as long as this trade lasts, the lands remain lying uncultivated. ”

Then at page 186 opposite D, this is a statement of the Director General :

“ The chief task of a Postholder consists in trying by friendly and familiar intercourse to win over the Indians more and more, and accustom them to us; besides keeping a watchful eye upon the acts of the neighbouring strangers, both Christians and Indians, looking out for runaways, and having them brought in by Indians, etc.

Now, these are things which one or two men can do as well as twelve or more, for we never can station there a sufficient force to accomplish anything against a foreign enemy; moreover, since the soldiers here at the fort can now barely be kept under

discipline and from desertion, how would they behave at such a Post, where they are lords and masters, and might perpetrate many excesses, perhaps debauching the Indians and deserting with them to the Spaniards, instead of accustoming them to us? ”

It shows the condition of the colony as regards strength at that time.
(Adjourned for a short time.)

Mr Mallet-Prevost. — Passing on to the year 1781, Mr President, we have an incident which throws light upon the extent of the Dutch Colony in that year, and we have a map which graphically represents the extent of the colony. In the 2nd volume of the Appendix to the Venezuelan Case at page 237 is a record of certain proceedings in the Court of Policy in Essequibo, on August 13, 1781. This was the time when Great Britain was temporarily in military occupation of the colony and Commodore Thompson, who was there in command, asked for a copy of such map of this river as might exist here so as to give His Majesty a fair idea of the importance of this colony. At the top of page 238 we have the resolution which was adopted :

“ It was resolved to yield to the aforesaid demands and the Secretary was consequently ordered to have the aforesaid lists made out and to allow on demand a copy to be made for the Commodore of the sketch map of this river drawn by the land surveyor Des Touches and kept in the Secretary's archives The Commodore having at the same time spoken of the depredations — ”

and so on.

In the Venezuelan Atlas at pages 66 and 67 we have a reproduction of the map of Des Touches and it shows very graphically and clearly the condition of the colony at this time. There are two maps, one of which is practically a reproduction of the other, and I call attention to the one which is No 67, a little later than the first one, which shows the situations of the plantations.

The Tribunal will see that those plantations are all at the mouth of the River Essequibo itself, along the Arabian coast for some distance (though a long way still from the Pomeroon) and a number of islands at the mouth of the river, also on the east coast toward Demerara and following the line of the River up to the junction with the Cuyuni and Massaruni. The Tribunal will see how completely deserted that was by this date, 1780. This was the map presented by the Dutch authorities to those in occupation of the river at that time and it was in answer to a demand to be shown a sketch which would represent the extent and condition of the colony.

In the year 1786, again, there is a record in the British Counter Case Appendix, page 372, which I shall not trouble the Tribunal to turn to :

“ Of certain abandoned grounds of Petrus Piepersberg situated in the upper river below the falls. ”

I simply call attention to it as showing the use at that time of the term " upper Cuyuni. " It was a part of the river below the lowest falls.

Then at page 252 of the 2nd volume of the Appendix to the Venezuelan Case we have a further statement relating to the year 1802, which shows how this condition of the colony, limited to the mouth of the river, had continued. This is an extract from the report of the deputy to the Council of the colonies at Amiens, at page 252 of the 2nd volume of the Appendix to the Venezuelan Case :

" Our agricultural colonies are all situated on the main land; nothing but the shores of the sea and a small part of the rivers have been brought under cultivation ; "

I simply call attention to that because it corroborates the other evidence I have read.

Then comes this statement :

" Pushing by boat 100 [Dutch] miles up one finds on the other side of the mountains the finest and most fertile lands of the world, fit for products of the four quarters of the globe, mines of all kinds of metal, a temperate and healthy climate. In case of revolt the blacks can betake themselves thither, establish colonies, and, having become powerful through time and quiet, disturb or annihilate the white people's colonies below; of this the colony of Surinam furnishes a striking example. "

But the important statement there is of course a statement of a well-known fact that the colony itself was limited to the banks of the river and sea-shore. "

Then, turning to the 5th volume of the Appendix to the British Case, there are some further statements which take us to the end of this story. This is at page 176, and is from an Anonymous Memorial regarding the Colonies of Essequibo and Demarara in the year 1802. I read from just below letter C :

" In the River of Essequibo on Flag Island (the seat of the Administration and of the officials of that Colony; for the rest a small, barren patch of ground, on which there is not a single plantation), there exists an old, rickety fort named Zeelandia, which has not been kept in repair in order not to waste money unnecessarily : it serves only to hoist the flag there when ships that wish to go up the river come in sight, and to lock up criminal negroes in. On the point of that island is placed a small battery of about twenty rusty iron guns, which, without carriages or rollers, are lying on logs and stones, and at most are fit to make the flag respected and to fire salutes. A formidable fortress there would in these times, it is true, be without any

notable purpose, for the most important cultivation of the Colony of Essequibo must no longer be sought in the river of that name, but on its coasts, and on the Leguaan, Wakkenam, and Arabisi Islands, which lie in its wide mouth and cannot be covered, much less defended, by the fort of Flag Island. ”

So that even Flag island which was only a few miles above the mouth of the River Essequibo was by this time so far in the interior as not to serve any useful purpose whatever. It shows how completely that interior had become deserted.

Then on page 182 of this same volume is a proposed Charter for the colony. This was in the year 1803, when Essequibo and Demerara were in the possession of the Batavian Republic, and one of the colonists who had been a late member of the Council, Ruysch, presented a proposed Charter.

Lord Russell. — They had just been restored to the Dutch at that time?

Mr Mallet-Prevost. — Yes; they had been restored to the Dutch at that time by the Peace of Amiens. Of course this Charter was never adopted. There is no record that it was even considered, but there are certain statements of fact here in this Charter which are significant :

“ Inasmuch as there are to be found in the upper rivers of this Colony — ”

and of course by that he means the Essequibo, and the Cuyuni, and the Massaruni below their lowest falls —

“ Inasmuch as there are to be found in the upper rivers of this Colony, and likewise in the various creeks, a great number of abandoned plantations and uncultivated lands, the Republic grants to all who may wish to establish themselves on one or more of those estates, and to cultivate there rice, tobacco, cocoa, indigo — ”

and so on, and so on, certain privileges. The fact is stated here that though that interior was completely abandoned and this proposed Charter is one which would hold out inducements to the colonists to go there, nothing was done under this Charter and the condition of affairs was in no ways altered.

Lord Russell. — I also see that that is one of the documents which related to giving lumbering rights in the neighborhood of the Barima.

Mr Mallet-Prevost. — Yes, this was appealed to, my Lord, by our friends on the other side as though it showed any rights in the Barima and some timber rights in the Waini. It is simply a proposal of an individual, a proposal which, so far as appears, was passed by in absolute silence, and nothing at all was done under it whatever.

Chief Justice Fuller. — What became of the Charter? What became of the individual?

Mr Mallet-Prevost. — There is no record of it at all. This man Ruysch is the author of it, and he proposed this Charter. I do not think even that it appears to whom it was addressed. It was probably to the Court of Policy at Essequibo, but there is no record of anything or that it amounted to anything. It is simply a declaration of an individual and the only value that it has is as a statement of facts which it contains by that individual; so far, it is valuable, for it is the testimony of the man who speaks.

Chief Justice Fuller. — Well, what do you think of his opinion about the granting of lumbering rights in the forests of Barima? Is that evidence?

Mr Mallet-Prevost. — I do not think it is, Chief Justice. Absolutely, I do not see how it can possibly be evidence. Will the Tribunal kindly turn to the Appendix to the British Counter Case, at page 259, which contains a document of the year 1803?

Lord Russell. — That last is in the year 1803?

Mr Mallet-Prevost. — Yes; this is another of the same year, my Lord, — 1803. This is a report to be submitted to the Council of the American colonies and possessions by the Court of Policy and Justice, Demerara. By this time, as I stated this morning, the seat of Government had been moved away from Essequibo entirely and had gone over completely to Demerara, which was the principal and most important part of the Colony and has been so from that time to this. This is on page 259, just below B.

“ The cultivation and laying out of new plantations in Essequibo, having considerably increased for some years past, and especially on the west coast — ”

that is, along the Arabian coast, —

“ renders that coast now the most important part of that river, all the old plantations and, in fact, the whole of the upper river having for some years past been deserted and abandoned, there being above the present capital no others than the sugar plantation in the Creek Bonasieke and one other sugar plantation named “ Schoonhoven ” right up in the river on the main shore, in contrast with which there are now on the west shore and sea-coast of Essequibo, including Pomeroon, ninety-one cotton, coffee, and sugar plantations, so that the old capital, now still situated on Great Flag Island, lies entirely outside that part of the river which is becoming inhabited, and its removal is, therefore, becoming more and more necessary.

That the loss occasioned by that removal is of little or no importance for the Government or the Mother Country, since the State buildings have fallen into decay and are irreparable whilst the fort is quite uninhabitable and abandoned; the only

building that is still the best (*sic*) is the smith's shop, so far as the walls are concerned, since all the requisites for working the iron are no longer there and cannot, therefore, be taken into account. The Council Chamber and Secretary's office are relegated to two apartments in the church, which building belongs to the Colony; this loss, too, the Colony will gladly bear, and forms no obstacle to the removal of the capital to a fitter site.

That to him, the undersigned, the fittest site seemed to be the upper point of Leguan Island, where the ships usually lie at anchor, the water there being sufficiently fresh and fit for use, whilst in the neighbourhood, on Hog Island, for instance, there is enough fire-wood; the site, too, is such that correspondence between the Government and the military headquarters can always be carried on either by water or partly by land within a few hours.

“ That for further and general convenience, a strip of land on Wacquenaam Island ought to be purchased, through which to dig a large canal so that all the inhabitants can come with one tide to and from the capital.

That on the main shore near the plantation Parrica or even near the plantation “ Jarone ” a piece of foreshore ought to be purchased for the establishment there of a proper ferry, large enough to transport horses and carriages, those two plantations lying pretty well opposite the upper point of Leguaan Island.

All this, however, on the supposition that Essequibo shall remain separate as it now is; but if on the contrary (as has been rumoured) the Commandeurship should be withdrawn, and the Court of Justice go over to Demerara, as that of Policy has already done,

Then would the undersigned advise near the Creek Itoeribise, where, even in the dry season, there is fresh water, and never any lack of firewood, and where the Americans also in former years, during their sojourn in the colony, have lain, both as now being more in the centre of the entire settlement, and as having the advantage of the upper point of Leguaan Island, principally bearing in mind the necessity of a speedy correspondence between the seat of Government and the Commandeurship; by which too the purchase of land on the main shore for the establishment of a ferry would be rendered unnecessary, as well as the purchase of the ground upon Wacquenaam for making a canal.

By the transplanting of the capital, wherever the latter may come to be, commerce and navigation will revive in this river, strangers and newcomers, who, from lack of a capital, often remain in Demerara, will be induced to come hither, and greater encouragement will be given to planters to do the same and to

the further laying out of plantations and the extension of cultivation. ”

A last and an ineffectual effort to stem the current that was going in the direction of Demerara and to do something for Essequibo before it should take completely a secondary position. Then, in the year 1809, we have the last account which I shall read in connection with this history.

Lord Russell. — There is upon the next page, 271, a statement of trade. Who is Luijken, who signs this document? Who is the writer of it?

Mr Mallet-Prevost. — I do not know whether he held any official position or not.

Lord Russell. — He speaks of all the colony and not of the part of the territory we are considering now. He gives there even the trade in the year 1801. In 1801 there was I think English possession, then came the Peace of Amiens in the year 1802, and the transfer back again to the Dutch in the year 1803.

Mr Mallet-Prevost. — Yes; my Lord.

Lord Russel. — Notwithstanding that state of things, he speaks there of a very considerable trade; 15,000 casks of sugar, 4,000 casks of rum, 20,000 bales of cotton and 11,000,000 lbs of coffee.

Mr Mallet-Prevost. — Yes; there was a very large production at that time, but that also included Demerara at that time. It was not a question of trade, it was a question of production, my Lord, and I have been showing that, in this history, the colony was going away from the interior and going towards Demerara.

Lord Russell. — I understood your point. It also speaks of 359 ships, and that would represent a considerable trade.

Mr Mallet-Prevost. — Yes; Rodway mentions that fact. I had only intended to refer to him but in view of what your Lordship has pointed out I will read what he says on that point, in a moment or two, but first may I call attention to the Venezuelan Counter Case volume 3 on page 231. These are extracts from a publication concerning a description of the colonies of Essequibo, Demerara, Pomeroon and Berbice, by Henry Bolingbroke, in the year 1809. Speaking, on page 231, he refers first to Stabroek, which was the first name given to the present Georgetown and of course in Demerara :

“ Stabrock the political metropolis, and principal seat of exchange for produce of all the countries adjacent to the Demerary and Essequibo, is situated on the east side of the river Demerary. The population of Stabrock consists of about fifteen hundred whites, two thousand free people of colour, and five thousand negroes. The laws oblige every man from the age of sixteen to fifty to enroll himself in the burgher militia. Nine miles west of the Demerary is the river Essequibo, which, at its

mouth commencing from Borasierre, and extending to Kapoeja creek, is twenty-one miles broad. The former serves as a boundary to the two colonies. The shires of Essequibo and Demerary from their conjunction with each other, are comprised under one government, though two distinct colonies. Each has its court of justice and subordinate officers, but one court of police suffices for both, which is held in Demerary, at Stabroek. But to return to the Essequibo river, — Fort Island, about fifteen miles from the mouth — ”

Lord Justice Collins. — Those are Dutch Miles, I suppose, all of them?

Sir Richard Webster. — Yes, all of them.

Mr Mallet-Prevost. — I suppose so.

Lord Justice Collins. — “ 21 miles broad ”; that is the River Essequibo is that at its mouth?

Mr Mallet-Prevost. — Yes, my Lord. Then :

“ But to return to the Essequibo river, — Fort Island, about fifteen miles from the mouth — ”

that 15 miles certainly must mean English miles, because I do not think that Fort Island is more than that distance away. It could not refer to Dutch miles, as that would make it 60 miles off, and the distance is not that from Kijkoveral.

Chief Justice Fuller. — A Dutch mile is not four times an English mile?

Mr Mallet-Prevost. — Yes; I think so.

Chief Justice Fuller. — It is a league.

Mr Mallet-Prevost. — I beg your pardon ; I was confounding it with a Dutch hour. The distance from Kijkoveral to Tiger island, for instance, is only 48 miles.

Lord Russell. — I understood that a Dutch mile was three times an English mile.

Sir Richard Webster. — That is right.

Mr Mallet-Prevost. — Yes; I think that is right, my Lord. And consequently it could not be here referring to Dutch miles, because they cannot make that distance 45 miles. It is 48 miles all the way from Kijkoveral, but Fort Island is not one-third of the distance. Fort island is there (pointing it out on the map on the wall), and from Tiger island, here, to here, is 48 miles.

Lord Justice Collins. — Is the Essequibo river only nine miles west of Demerara ; because it begins by saying,

“ Nine miles west of the Demerary is the river Essequibo. ”

Mr Mallet-Prevost. — Yes; I should think that that distance is about 9 miles. Your lordship sees, this distance being about 48 miles, that would be about 9 or 10 miles. It is only a short distance.

Lord Russell. — It is more than that.

Mr Mallet-Prevost. — Well, it is about that. It is, roughly speaking, 9 miles. I do not know that it is an absolutely accurate measurement, but it is about that. It is at any rate not very much more.

“ Fort Island about 15 miles from the mouth, is the seat of the administrative government, and the residence of the commander who is president of the court. A considerable expense was incurred here in the erection of a battery, which mounted forty pieces of cannon, with covered ways and ramparts, surrounded by a deep moat, over which a draw-bridge was thrown. ”

Lord Russell. — That is Fort island.

Mr Mallet-Prevost. — That is Fort island, my Lord.

“ This is now fast decaying. The cannon are dismounted; and the fort is totally deserted, save by the wash-women, who still find it a convenient place for hanging linen to dry. A few starved cattle of mynheer Blecker's, the tavern-keeper, are allowed to browse there, being intended for the repast of the very honourable members of the court of justice exclusively, who in this instance shewed their spirit of selfishness, in not permitting the numerous people that are obliged to dance attendance, when the court is sitting, to share with them the conveniency of the only tavern in the island, and indeed in the colony. ”

It shows the utterly wretched condition of the Essequibo river in the year 1809, just three years prior to its formal cession to Great Britain and a year before the revolt of Venezuela.

Mr Justice Brewer— I do not think, however, that that gentlemen is very accurate in all his statements, because I see, on the next page, he states this :

“ In 1698, the first settlement was founded on the Essequibo ”.

Mr Mallet-Prevost. — When he comes to treat of history, he is very inaccurate, but when he comes to state what he has seen as an eye witness I think his testimony may be depended upon. In the third volume of the Appendix to the Venezuelan Case is a statement from Rodway which I had intended only to cite but which in view of the suggestion made by the Lord Chief Justice of England I shall take the liberty of reading. It is on page 324. These are some extracts from Rodway's History of British Guiana, published in Georgetown in the year 1893 :

“ For several years previous the seat of government in Essequibo had become of less importance, while the office and

residence of the Commandeur were going to ruin. Several proposals were again made to remove it to some other locality, Leguan — ”

that is another one of the Islands at the mouth of the Essequibo —

“ being thought most suitable, but nothing was done. At the meeting of the Court of January 28th, 1806, it was reported that the house of the Commandeur was uninhabitable, and that he was obliged to live in the colony House, where the Councillors of Justice lodged during the session. It was decided, on account of the uncertainty as to whether a new town would be built in Essequibo, that certain alterations should be made in the colony House to make it more convenient for Commandeur Ouckama ”.

And then down at the bottom of that page, there is this :

“ The years 1811-12 were very disastrous to the planters, especially to those who cultivated only sugar. On the 30th of November, 1811, a meeting of the sugar planters was held in Marshall's Hotel to consider the alarming state of things and the ruin that stared them in the face. One of the last Proclamations of Governor Bentinck was that of April 1st, 1812, uniting the Courts of Justice of both Rivers, so that from that time all distinctions between Essequibo and Demerara were finally abolished. The Commandeur and several other officials also necessarily lost their situations, while the archives of the old colony were brought to Georgetown. ”

And then comes the reference to the produce of the colony to which the Lord Chief Justice of England referred :

“ The produce shipped from Demerara and Essequibo in 1814 amounted to 31,336,906 lbs sugar, 1,701,499 gallons rum, 8,328,511 lbs coffee and 6,018,437 lbs of cotton. By this time cotton had seen its best days and was about to be replaced by sugar. During the next few years the coast plantations were in many cases abandoned or given over to the grazing of cattle, their slaves being removed to carry on sugar cultivation, which required more labour. As there was no possibility of increasing the number of labourers, it necessarily followed that turning a cotton or coffee estate into a sugar plantation meant the abandonment of at least half the acreage in cultivation. The abolition of the African trade in 1807 was naturally a great shock to the planters ”

Lord Russell. — That means the slave trade?

Mr Mallet-Prevost. — Yes; they had depended upon slaves throughout all the years.

“ The old system of buying new laborers to open up and

extend the plantations then came to an end, and enterprise in that direction received a check from which it has never since recovered. ”

Mr Justice Brewer. — May I ask you this? It speaks there of the archives having been taken to Georgetown. Do these records show whether Georgetown has still remained the capital of that colony?

Mr Mallet-Prevost. — Well, they are taken to Georgetown —

Mr Justice Brewer. — I mean the archives that were taken to and produced from Georgetown.

Mr Mallet-Prevost. — They are now taken from Georgetown; a great many of the papers that are printed in this case are taken from Georgetown.

Mr Justice Brewer. — Is there a distinct record kept at Fort island or anything in the Essequibo regarding these records?

Mr Mallet-Prevost. — No; I think all of them are in Georgetown, Demerara. Georgetown is the capital today of British Guiana, and the capital was moved there, as I have shown here, in the early part of this century, and the Essequibo river comparatively speaking is a matter of small importance.

This is the history, Mr President, of the Essequibo colony. I have not gone into it as extensively as I should like to have done if I had had more time, but I think I have gone into it sufficiently to rebut and not only to rebut but to demonstrate how entirely fallacious and unfounded are the statements which represent this Essequibo colony as a great, growing settlement that needed more land along the coast and more land along the interior, with a power that was overshadowing the Spaniards in the Orinoco, and with so much energy behind it as to make us thankful that anything is left even of the Orinoco to be inherited by Venezuela.

Before I enter upon the history of the interior, I want to say a few words with regard to the geography of that interior. I have already had occasion to point out in connection with the history of Essequibo, the fact that the lowest falls of the Cuyuni, the Massaruni and the Essequibo were historical barriers, and I say historical barriers because I mean that in the history of the colony they had that effect. They had, as a matter of fact, prevented the extension of the Dutch settlement towards the interior. I want however in discussing the geography of this region to go beyond the immediate confines of this colony and to take a glance at the character of this whole interior and particularly at that region which is watered by the Cuyuni and the Massaruni rivers. The distance between the island of Batavia, which is at the very lowest falls — and I select that point because it is at tide water. I think that Batavia island from Cartabo point is 8 or 10 miles, where it is perfectly clear water. That is where the cataracts begin. The distance from Batavia island to the mouth of the Curumu, at which place toward the latter part of the 18th century the Spaniards erected a fort, is about 190 miles.

Mr Justice Brewer. — In a direct line or what?

Mr Mallet-Prevost. — Along the river itself. I have taken these statements from the table which has been prepared and printed. It is along the river, about 190 miles.

Lord Justice Collins. — Where do you place the Fort of Curumu?

Mr Mallet-Prevost. — At the mouth of the Curumu. The Spanish Curumu Fort was located, as a matter of fact, on the south bank of the Cuyuni just at the mouth of the Curumu. The Attorney General has contended and has cited some evidence in support of his contention that that fort was on the north side of the river. When I come to deal with that point, I shall show, by the evidence, that it was on the south side. It is simply overwhelming; there is no question at all where it was located, as I shall show when I come to deal with the printed evidence.

Lord Russell. — I thought it was stated to be further up than that point.

Mr Mallet-Prevost. — That has not even been contended by the Attorney General, my Lord, and I appeal to the Attorney General himself. It is on the Cuyuni river. He says it is on the north bank of the Cuyuni and not up further.

Lord Russell. — I thought it was further back than that.

Mr Mallet-Prevost. — No; he does not say so. The Curumu is a Spanish *Mission* which was destroyed by the Caribs, I think in the year 1750; but that is a totally different thing from the *fort* which Marmion refers to and about which there is the record, at the end of the last century, that it was in existence, and until 1809 at least, and that it was at that point (indicating it on the map.) The only difference of opinion between the Attorney General and myself is as to whether it was on the north side or on the south side. He contends that it was on the north side; I shall demonstrate when I come to deal with that point that it was on the south side. But I have taken that because it is the extreme eastern point of actual Spanish settlement in this disputed territory, and I have taken Batavia on the other hand because Batavia is the westernmost point of actual Dutch settlement, of course, without taking into consideration these possessions whose history I shall consider and which so far as they go to establish anything show a Spanish and not a Dutch occupation of this region, but the actual settlements which were not destroyed either by the Dutch or by the Spaniards, that is to say the Dutch settlement which was not destroyed by the Spaniards, the last westerly Dutch settlement is at Batavia and the last easterly Spanish settlement is at the Spanish Fort on the south side of the Cuyuni, opposite the mouth of the Curumu. Of course, none of these Spanish settlement missions came to an end by reason of any Dutch attack. A number of them were destroyed. There was a mission right up at that point, at the very mouth of the Curumu which was destroyed by the Caribs. The Mission of Curumu was destroyed by the Caribs, and so was the mission of Mutanambo. And I am of course excepting from this statement the three missions about which

there is some question, namely Wenamu, Queribura and Mawakken, which are not shown on this map but which are somewhere down here (pointing). But taking permanent settlements, the Spanish Fort at the mouth of the Curumu was the most eastern Spanish settlement and that Batavia was the most westerly Dutch one, and the distance between those two points is about 190 miles.

Lord Justice Collins. — English miles?

Mr Mallet-Prevost. — Yes; There is a fall I had intended to note the distance of but unfortunately I have not done so; it is from Batavia island to Womopo fall. Womopo fall is a large fall. It is probably the same as the Womuipong, which is between K and L on this map, on square ten. Right back there is a place called Waika hut. There is a large fall there called variously by different travellers; on this map it is called the Womuipong, and I think it is either Mc Turk or Schomburgk who calls it the Womopo.

Lord Russell. — It is called on this map Womupong portage.

Mr Mallet-Prevost. — Yes, there is a portage there, as there is all along the falls on the Cuyuni. From Wakupang falls to the Womuipong portage is clear water excepting for the Camaria rapids. Unfortunately that is not shown on the map. I have left as many details out from that wall map as possible, and I shall have to refer to this British map.

Lord Russell. — It is in 10 K.

Mr Mallet-Prevost. — Yes; it is in 10 K. Camaria is a rapid which is mentioned in the enumeration of rapids by Schomburgk but is not mentioned by McTurk. McTurk's testimony is such as to authorize us in stating that above Womuipong to Curumu is practically clear water. When I say McTurk's statement, I am not referring to the depositions which he has made for us in this case, — I shall refer to that by and by, — but I refer to his testimony before he became an interested witness, and Schomburgk mentions the Camaria which is the only one that I think any one mentions in that district; that is practically clear water. This district from the Womopo to Batavia island contains three series of what are variously called falls or rapids, ... some of them are rapids, and some of them are certainly falls.

Mr Justice Brewer. — I want to get all these places right.

Mr Mallet-Prevost. — Does your Honour see Womopo or Womuipong? It is at 10 on the red line between K and L. It is called there Womuipong portage.

Mr Justice Brewer. — There is a portage there?

Mr Mallet-Prevost. — Yes, and then there is a great cataract, but in another map it is referred to as the Womopo and I have no doubt that the two are identical. Now I say from that point to the lowest falls on the Cuyuni there are three series of falls or rapids with perfectly clear water in between each of these series. The lowest series that is to say this one nearest to the Essequibo River, begins at the Acaya which is here named

on this map the Acaya cataract and there are a number of cataracts going up for some distance. Schomburgk's map shows nine named falls or rapids.

Sir Richard Webster. — Yes.

Mr Mallet-Prevost. — And he mentions either two or three portages. In this connection, I will ask the Tribunal to turn to Schomburgk's map in the British atlas. As I shall have occasion to read from Schomburgk's description of these rapids, it is well to have the map before us. I refer to map No. 45.

Lord Russell. — What is the meaning of the lines across the river Cuyuni, and indeed the others?

Mr Mallet-Prevost. — Do you mean the British map?

Lord Russell. — Yes.

Mr Mallet-Prevost. — I do not know, but I suppose they are intended to indicate the existence of falls or rapids or cataracts.

Sir Richard Webster. — It is intended to indicate by them what those names are applied to.

Mr Mallet-Prevost. — I really do not know why they are put there.

Lord Russell. — It is put there for the names, I think.

Mr Mallet-Prevost. — A better picture of this will be found in the atlas to the British Case at page 45.

Sir Richard Webster. — The line is to localize those names. That is the point of it.

Mr Mallet-Prevost. — The map, on page 45, is the map of Schomburgk of this part of the river; and Schomburgk — between the Acaya, which is the lowest of those falls, and the Payuca rapids, which are at the left hand extremity of the map and which may be taken to be the western extremity of this first series of falls or rapids —

Lord Russell. — Whereabouts is Payuca?

Mr Mallet-Prevost. — At the extreme left hand corner of the map, my Lord. It is spelt Paruca on one map and Payuca on the other. Between those two points, Schomburgk gives the names of nine different falls or rapids, and he gives two portages, by name, where the boats have to be unloaded, of course, and carried up, and he probably intends to give the name of a third one, — to indicate a third name opposite Suwaraima island, because he writes there "Large falls not passable for canoes."

Mr Justice Brewer. — On the upper side of the island.

Sir Richard Webster. — They go through the other channel there.

Mr Mallet-Prevost. — I say it is unnecessary to show whether he means to show two or to show three portages. There are two and possibly three portages upon the first of that series of rapids. The second series of rapids which occurs some distance further up and which are separated from the others by some clear water, begins at and extends from Dowocaima (?) to Wakupang. I will locate those in connection with Schomburgk's description of his journey.

Mr Justice Brewer. — On what map is that?

Mr Mallet-Prevost. — May I just make this statement now and locate them in a few moments when I come to read the statement? In that second series Schomburgk mentions two rapids as against nine in the last; and the third series which Schomburgk refers to and which goes up as far Kenaima island, below the Acarabisi, in that third series there is one fall which is a large fall of 30 feet and a large number of rapids, but these is only one fall which is mentioned by name. Now the description of these various rapids will be found (and we have two descriptions, one by Schomburgk and one by Mc Turk) the first in the 7th volume of the Appendix to the British Case at page 28. In order that we may begin with the series which is nearest the Essequibo I go in the inverse order from Schomburgk's trip, and call attention first to page 29, opposite C, where he speaks of the third series of falls :

“ We had commenced this morning (26th July) the descent of the third series of falls, caused by a small range of mountains, through which the river has broken itself a passage. ”

And those are the particular words of Schomburgk that I had in mind this morning when I said he corroborated Hildebrandt in speaking about the mountain range which was pierced by the various rivers and which formed a gorge or other various points of passage into the region east.

Sir Richard Webster. — That is not the Blue mountains; that is not the same position at all.

Mr Mallet-Prevost. — Well, I beg your pardon, I think it is. Speaking about the third series of falls, and it is practically with the same, I have stated here that he fixes this Payuka rapid as being practically the western point.

“ It rained almost incessantly; and as the wind was against us, it endangered our descent of numerous rapids, and the coxswain could scarcely look forward. We had to unload at the Cataract Aruakamatubba, and to haul our corials overland. We passed soon after the Woku or Powis Mountain, which rises on the river's right bank to a height of 500 to 600 feet; ”

that is shown on his map just below Suwaraima island ;

“ this ridge extends west-north-west, and east-south-east, and it can be seen from the junction of the Cuyuni and Mazaruni. Little islets, consisting of heaped-up masses of rock divide the river into numerous channels. We had to pass the fall Camaria, and, as it did not afford any portage, we attempted to descend it in our craft. It nearly proved our destruction. As it was, the craft filled with water, and it was only the presence of mind of some of our crew to which, under the Almighty, we were indebted for our safety. We reached, on that evening,

Ematubba, generally called “ the Great Fall, ” where we had to unload and to haul our corials overland, and encamped at the foot of the small island, whither the corials had been drawn. Continued rains precluded the possibility of any observations, and we started on the morning of the 27th July, under the same unfavourable weather. An hour and a-half after we were at the foot of the last fall, called Akaya, and saw before us the junction of the three rivers Essequibo, Mazaruni, and Cuyuni. ”

Then above, on the same page, he gives the description of the second series of rapids. Possibly that may be followed better by reference to Schomburgk’s map No. 44 which shows the region immediately to the west. The sixth line from the top of page 29 :

“ We had anxiously looked forward to meet the party which we expected with supplies of provisions. We heard of them today at a settlement opposite the Toro hills; but only to have the disappointment of learning that, on ascending the previous day the dangerous fall Wakupang, they had lost everything, and saved only their lives and the corial. Among the baggage lost was one of the instruments — Massey’s log — and a new tarpauling. Thus disappointed in our hopes of meeting comfort, we had for some days longer to continue our scanty fare. We paid off our guides, who had accompanied us from Haiowa; as, with the men who had come up from the Essequibo, our crew was sufficiently strong to reach that river.

Lord Russell. — Where does it begin then ?

Mr Mallet-Prevost. — He is travelling down from the mouth of the Acarabisi. And now we come to the first, at page 28 :

“ Descending at the rate of 5 miles an hour, we passed numerous rapids where the river was free of impediments; it was about 600 yards wide. We passed the Otomong hills, and avoided by narrow passages between islands numerous large cataracts, which, in our small canoes, it would have been dangerous to attempt to descend; ”

showing that at this point this could be avoided by canals in the river itself :

“ At the cataract of Poinka-marka, or *Wommipong*, of the Caribisi, we had to unload and draw the crafts over a portage of about 300 yards extent. The perpendicular fall of this cataract is not less than 30 feet — ”

that ought to decide if this is navigable or not.

Lord Russell. — I do not think anybody suggests it is, over that fall.

Mr Mallet-Prevost. — It think it has been.

Sir Richard Webster. — Not navigable, but it was navigated.

Mr Mallet-Prevost. — I am glad to have the Attorney General withdraw any contention.

“ The dangerous fall Wakupang, where our stores were lost on the preceding day, was passed without accident. This is the commencement of the second series of falls or rapids. The river is studded with islands. Green-heart and purple-heart, both most valuable forest trees, become abundant along its banks; but the impediments which the numerous rapids throw in the way will for some time render these treasures unavailable to the Colony. We passed in the afternoon the Cutuau hills, along which a river of the same name has its course. The Cutuau offers a communication with the River Waini, and is much frequented by the Indians of both rivers; 8 miles further eastward is the rivulet Wayarimpa, whence another path leads to the Puruni. The river is here free of impediments, its breadth from 600 to 700 yards, its waters clear and of a brownish colour. The circum-meridian altitudes of three northern stars gave me 6°43' N. as the latitude of this creek; a few miles from it is the Cataract Tonomo, where the Postholder resided after his station had been withdrawn from Tokoro Island. ”

Lord Russell. — Whereabouts on this map is Wakupang?

Chief Justice Fuller. — It is in L 10,

Mr Mallet-Prevost. — I think that is it.

Lord Russell. — That is the beginning of what?

Mr Mallet-Prevost. — He calls it going up from the Essequibo. He was going the other way, my Lord. Will your Lordship look at Wakupang in L 10.

Lord Russell. — That is in fact saying that Acaya is the first falls and Wakupang is the beginning of the second.

Mr Mallet-Prevost. — He was going down the river you see, my Lord. It is the upper end.

Sir Richard Webster. — I have not withdrawn it, but I have never contended the contrary.

Mr Mallet-Prevost. — Well,

“ The perpendicular fall of this cataract is not less than 30 feet and it is generally called the *Canoe-wrecker*, in consequence of many fatal accidents which have occurred here. We halted in the evening at 6 o'clock at a single hut inhabited by a Waika, his wife, child, and a dog. He shared his hut with us, although we were rather a numerous party for a single

house. At a short distance hence the Rivulet Aracuna enters the Cuyuni. It is inhabited by a few Waikas, and a path leads from it to the River Puruni, which flows into the Mazaruni. The latitude of the hut is 6° 46' N.

The rapids and falls now become less frequent, and still water commences. The tract of granite and gneiss, which causes these impediments, extends, therefore, from the Aracuna hills uninterrupted to the small range of hillocks called Macapa. It is about 50 to 60 miles in length, and constitutes the *second* large series of falls. ”

That is a mis-print for the *first*. He refers to the *second* later :

“ About 8 miles below Arakuna, and opposite some small hills which rise on the river's right bank, is the Island Tokoro (Tokoro-patti), where, towards the close of the last century, the furthest outpost of the Dutch was situated, Although generations have elapsed — ”

and so on ; that is the correct location of the furthest outpost of the Dutch as we shall show later on.

Then there is another description of this in the Sixth volume of the Appendix to the British Case at page 247 and this is a description by Mr Mc Turk, the present officer in charge of that district. It was made in 1891 before there was any suggestion of any arbitration upon this. I read from the bottom of the page :

“ The suggestion being approved of I left Kalacoon ” (which is practically Cartabo) —

Sir Richard Webster. — It is just below it.

Mr Mallet-Prevost. —

“ on the morning of the 19th December, 1890, with one batteau and eight men. Unfortunately for us, the rain commenced to fall from the time we left, and was almost incessant, day and night, to the 12th January. As a consequence of the constant rain the river rose rapidly. This increased the current, and made the ascent of the river slow and laborious, besides entirely altering the appearance of the channels which I had passed through on previous occasions.

At the falls of Payuca — ”

which is the one referred to by Schomburgk and which in this map is called Paruca —

“ through the carelessness of the man holding the bow of the boat, it was allowed to sheer out, and in an instant it was broadside to the current, and the rope by which some of the men were hauling up the boat dragged out of their hands. Fortu-

nately, there were no rocks in the main fall, and the boat went down safely, but was nearly filled with water. Myself and two men went down the fall with the boat. We got it in and bailed it out quickly, and then dragged it up inshore to where the rest of the men could get at us. Luckily the rice did not get wet, and, beyond a few biscuits, nothing was lost — ”

and so on.

“ We passed the last place on the 24th December — ”

so that they had been five days going up there —

“ and spent our Christmas Day about $1\frac{1}{2}$ miles below the falls of Wakuy-wang. On the 29th December the channel we had chosen among the islands became so narrow and obstructed by falls and “ tacoubas ”, that at 3 30 P. M. we had to turn back and seek another route. On the 30th December we hauled the boat over eighteen falls.

On the 1st January, at 9 A. M. we came out from among the islands into the open river above Kanaima falls. ”

I call attention to this statement of Mr Mc Turk because it is very important in view of what he subsequently says :

“ On the first January at 9 A. M. we came out from among the islands into the open river above Kanaima falls — ”

that is below the Acarabisi, in K 10, and continued his journey from there on to Uruan, without the mention of any further obstacles.

Now in that reference he mentions no obstacles between Uruan and Kanaima, but on page 248 F he says :

“ I left this place at daylight next morning — ”

that is Algarobo —

“ and on the morning of the 13th of January arrived at a Carib settlement above the Kanaima falls. ”

He goes through that without any trouble. It was clear weather.

“ I went in here and after very great persuasion, got the only man there who could speak a little English to go with us as a pilot. On the 14th the boat went twice on the rocks, the first time splitting the larboard streak and the second time pitching me out when I got a number of bruises. This was through no fault of the steersman but because we came so suddenly on the rocks round points above them. We then had to clear a road across an island about 400 yards long, lay rollers, unload, and haul the boat over. This occupied nearly half a day. At 12.30 p. m. we started from the other side.

The appearance of the river from the lower side of this portage

was most appalling; as far as the view was clear the river was a seething mass of broken water, with numerous whirlpools and pointed rocks showing between the waves. We all viewed them with dread, knowing we had to pass over them somehow. Placing myself at the highest part of the lading with the glasses, I directed the steersman, and by alternately running and lowering, at 1 p.m. came out into clear water, finishing one of the most dangerous passages through falls it has been my lot to experience.

On the 16th January we had to unload and haul over the boat twice owing to the size of the falls swollen by the rains, and again once more on the 17th. On this morning the boat was flung bodily on to a rock by the bursting up of the water, the uprising of the accumulated water from below. One man, who was standing up at the time, was thrown several feet clear of the boat, and was driven down the fall, but clung to some bushes below. We jumped on to the rock, and at the next uprising of the water the boat swung round and floated off; one man not jumping in in time was left on the rock. As soon as we acquired control over the boat, we picked up the men holding on to the bushes, and went as near as we could to the other on the rock, about 40 yards off, as we could get no nearer; he was motioned to swim, and I stood ready with a rope to throw to his assistance; he jumped in and reached the boat safely. We arrived, without further mishap, at the penal settlement at 10-30 A.M. ”

Now in view of these statements it is hardly necessary for me to read Mr Mc Turk's subsequent affidavit made for use in this case, but he says in that affidavit that the worst falls are in the upper reaches of the river and after all the navigation of the river is not seriously affected by them and he has made the journey one way I think he says in five days.

Sir Richard Webster. — And upwards of twenty journeys I think you will find.

Mr Mallet-Prevost. — Yes; and I will show what time they took.

Lord Russell. — It looks here as if he is speaking of an exceptional flood.

Mr Mallet-Prevost. — I do not know, my Lord, I have taken the only two descriptions that we have.

Lord Russell. — This is something I do not understand :

“ On this morning the boat was flung bodily on to a rock by the bursting up of the water, the uprising of the accumulated water from below, ”

I do not understand what he says in the line above,

“ We had to unload and haul over the boat twice owing to

the size of the falls swollen by the rains, and again once more on the 17th. ”

Mr Mallet-Prevost. — It may be that this was at a time when there was more rain than usual.

Lord Russell. — That it is easily navigated it is difficult to believe.

Mr Mallet-Prevost. — It is an impossibility, my Lord. Now I want to call attention to these two descriptions as far as it affects this discussion and I want to call attention to the description by others which shows that it is the lowest falls — beginning at the Acaya and going up to Tonoma where the Blue mountains come and strike the river — that *that* is the series of falls, not only the worst, but it was the one series to stop the growth of the Dutch colony in the direction of the Orinoco. Will the Tribunal kindly turn to the Venezuelan Case at page 29, a foot-note at the bottom of the page :

“ When, in 1837, an Englishman (Hilhouse) first went up the Cuyuni, he wrote : “ I can find no traces of any one having preceded me in the survey of the lower part of this river. ” And, having described in his journal the first day’s ascent, to the head of the Camaria Falls — “ we ascended this day ”, he thinks, “ fully seventy-seven feet ” — he declares that “ it is evident that colonization can never be attempted on this river ; the first day’s journal determines that — ”

that is a statement of an Englishman in 1837 —

“ beyond all other rivers ” he avers, “ the Cuyuni is the most difficult and dangerous of ascent. ”

That was published in the journal of the Royal Geographical Society in 1837.

At page 30 of this same volume is a statement from Perkins, a surveyor of the colony. I think he has published a map showing the location of many features in the interior, particularly the gold districts and this is what he says :

“ It has long been known as amongst the most dangerous if not the most dangerous of all the larger rivers of British Guiana, and there are times when the height of its waters, either above or below a certain point gives it every right to claim this unenviable notoriety. My first experience of it was a highly unpleasant one in 1877, when with a brother surveyor I spent about four weeks journeying up and down a portion of it and surveying placer claims on its right bank. On this memorable occasion we lost two boat-hands from dysentery, a third dying on his return to Georgetown from the same disorder and last, but not least, in coming down

stream our boat capsized at the Accaio, the lowest fall in the river, where one man was drowned and everything was lost. ”

At page 172 of this same volume is an extract from the Local Guide, which was a publication in Georgetown, and this is what it says, speaking of the year 1843 :

“ Above the rapids which occur about fifty miles from its mouth — ”

I think I stated it was 48 miles from Tiger island to Kijkoveral. —

“ there are no inhabitants except Indians. The same is the case with the two great tributaries of the Essequibo, the Cayuni and the Massaruni, which come from the west and the south-west. These rivers unite about eight miles from the Essequibo and their united stream joins that river about forty miles from its mouth. A short distance above their junction these rivers become impeded by rapids above which they are frequented only by a few wandering Indians. At their point of union with the Essequibo called Bartica is an Indian missionary settlement ; and three or four miles up their united stream on the left bank is the Colonial Penal Settlement, ”

and so on.

That is in 1843 and is a statement of a publication in Georgetown itself, a publication which was intended to give information as to the colony at that time.

Now coming back to Schomburgk, there is a statement, which I did not read but which is important, in the 7th volume of the Appendix to the British Case at page 30, in which after describing these three series of rapids and falls he makes a statement as to what the practical result of this geography is, about D :

“ The fertility of the tract we have explored has been pointed out in various places in this as well as in my former report. The lands adjacent to the Rivers Amacura, Barima, and Barama, and beyond the reach of the tides, are superior in quality to those of any other district hitherto visited, and this refers equally to the Cuyuni, where I met sugar canes of the finest description, and native cottons of superior staple and quality. But the difficulties which the Cuyuni presents to navigation, and those tremendous falls which impede the river in the first days' ascent — ”

and that is the point I desire to emphasize. It is the first falls in the *first day's ascent* that constitute the barrier which prevented the extension of Dutch settlement :

“ will I fear prove a great obstacle to making the fertility of its banks available to the colony. ”

Then we have a number of Mr Mc Turk's statements also in this volume 7 and the first is at page 320 opposite D : This is a statement in the year 1888 :

“ Owing to the falls on the rivers only a comparatively small area of country can be used for timber cutting and this space has been cut over twice and in some places three times. ”

There is another statement as to the barrier which these falls form. At page 322 is another statement of Mc Turk in 1889 :

“ The lower part of the Cuyuni River is very much obstructed by falls, which though not so numerous as those on the Massaruni are larger and tortuous in their course. This latter circumstance adds to the difficulty and danger of getting over them. Beyond the falls at Womopoh the river is clearer — ”

let it be remembered, in his affidavit for use in this case, Mc Turk tried to give the impression that it was the upper reaches of the river that were thus obstructed —

“ the falls being small and considerable distances apart. There are no placer miners above the falls of Wakerywang. The land is compared with the Massaruni low especially so on the northern bank and beyond now and again a small hill there are no high lands on that bank of the river up to the mouth of the Uruan. ”

That is his statement as to the upper reaches of the River Cuyuni. At page 324 there is another statement of Mc Turk :

“ The timber trade on the river has been a little better last year than the previous one but the space over which the timber is being cut is a limited one owing to the short distance upwards, the rivers are navigable for timber craft and I again respectfully draw the attention of His Excellency the Governor to the necessity that exists for some kind of forest conservancy. ”

Showing there again the use which the Colony could be made use of for timber cutting was limited to the district below those falls. At page 325 :

“ There have been several accidents during the year, and in many cases attended with the loss of life. This has been owing chiefly to the want of ability or strength of the batteaux captains, who are in many instances unfit for their posts. Many of them are mere boys without any experience, and

though thoroughly acquainted with the route and quite capable of taking a small canoe safely, have no experience in the management of a heavily-laden batteaux nor the requisite strength to work one in the large channels through which, owing to its size, it must pass. ”

Of course, in considering whether any particular barrier has been in fact a barrier we have to consider not what might have been done if conditions were different but what was done with the conditions such as they were, and if the only boatmen were unskilful and if the barrier was not navigable by those boatmen it was a growth of the development of the colony. We have this statement then by Mc Turk (B. C. VII, 329 F) :

“ During the month of June, the old road from near the mouth of the Morabisci Creek to the open water above the Camaria Falls was reopened and is much used by the miners on the Cuyuni. To complete it, the road requires two or three bridges, and would be then complete for all purposes for which it is required. As it is, by using this road, some of the most dangerous falls on the Cuyuni River are avoided, and one and sometimes two portages also, according to the state of the river. ”

showing that for the purpose of getting over this lowest series of cataracts they have avoided the river completely and gone overland.

Lord Justice Collins. — May I interrupt you? Is this to show that nobody did go up the river?

Mr Mallet-Prevost. — No; to show the fact that, in the first place, as a matter of physical geography this barrier exists; and secondly to show historically, both in the Dutch time, it acted as a barrier and now, in British time, till very recently it also acted as a barrier and also to contradict the statement which Mc Turk makes in the affidavit for this case when he tried to brush this aside.

Lord Justice Collins. — I want to see what bearing it has on the discussion before us. If it establishes that people did not go up, it is a strong point in your favour; but if it proves that people did go up, then any difficulties they got over are not *ad rem* to this.

Mr Mallet-Prevost. — I do not mean to say that that barrier has been absolutely insuperable and that nobody got up, because the Dutch have passed it going up and the Spaniards have passed it coming down.

Lord Russell. — It was an obstacle but not an insuperable barrier.

Mr Mallet-Prevost. — It was more than that. It was a barrier which prevented settlements extending but it was not a barrier which prevented individual traders going up.

Lord Justice Collins. — It has not been extended to settlements.

Mr Mallet-Prevost. — I beg your Lordship's pardon. Will you look at Dutch settlements in 1750.

Lord Justice Collins. — You mean in the sense of cultivation.

Mr Mallet-Prevost. — They spoke of Dutch families being settled there. The allegation is made and I must show that this is a barrier, not merely to trade, but to the actual spread of settlements.

Mr Justice Brewer. — There never was a barrier on the face of this earth that man could not get over.

Lord Justice Collins. — It has not been put higher than this — that there were spread over this country isolated habitations of Dutchmen.

Sir Richard Webster. — From time to time, and not always continuous.

Chief Justice Fuller. — There was an account of some Dutchmen living up there with several negroes.

Lord Justice Collins. — And of course he might have got there by a balloon.

Mr Mallet-Prevost. — I beg your Lordship's pardon. I do not try to contend that this was something that went to the heavens and divided these regions. When we speak of natural barriers, there is not a natural barrier, as Mr Justice Brewer has said, in this world which prevents communication from one to the other. The Alps have been tunneled and the Himalayas crossed; still, natural barriers *do* exist and have a significance.

Lord Russell. — Of course they have and that is enough to say about it.

Mr Justice Brewer. — Is there not another thing in reference to this you have not referred to, outside this matter of barrier and obstruction or whatever you may call it. You have heretofore referred to the fact that for some reason the plantations in the vicinity of Kijkoveral were abandoned and the Dutch found it more convenient to establish plantations. Was not that one of those things, irrespective of anything going into the interior, preventing motion in that direction and their notions of trade led them to go towards the coast and not to push inwards.

Mr Mallet-Prevost. — The abandonment of those plantations near the falls and moving down to the mouth of the river had its effects upon the interior, but why did they move down from those places? It was because they could not move up. There were attempts to establish plantations above the falls. The statement was made that the ground was better above than below. They did not get there and could not spread in that direction and the colonies spread, therefore, down. Hence the barrier has a significance on this question. We have argued that Spain had an original title to this region; that the Dutch settled in Essequibo and that they possessed what they had got and nothing more and if anything is to be given, more than the islands upon which they settled, it is proper to show what natural barriers there were of the country immediately adjacent. I say the first of those was the lower falls and hence it has its significance.

Lord Russell. — Of course it has and the question is whether we have not exhausted its importance by this time.

Mr Mallet-Prevost. — Yes; I daresay we have, my Lord; but I would like to make the record complete by a few more significant references.

Lord Justice Collins. — Schomburgk found portages there and somebody must have made them,

Mr Mallet-Prevost. — There is no question, and I do not say traders did not go up and come down. The Spaniards did.

Chief Justice Fuller. — And the Indians would make portages?

Mr Mallet-Prevost. — Yes; all through this country. They were away in the interior and went to places where a white man has not been.

Mr Justice Brewer. — What do you understand by *portages*? Something that somebody has made?

Mr Mallet-Prevost. — They may have been made by travellers passing over, by people going up and down but they were placed alongside rapids or falls which were impossible for boats and people had to take their boats up.

Chief Justice Fuller. — And their canoes round. The canoes are the lightest things in the world. I have been in them and I live on a portage myself. Of course, they went round.

Mr Justice Brewer. — I do not think, in our western country, that portage means anything except where you have to take your boat off the water and carry it round.

Lord Russell. — I think Schomburgk meant more than that because he marks where something was done to facilitate the act.

Sir Richard Webster. — Trees have to be cleared and rollers put down.

Mr Mallet-Prevost. — I think Schomburgk's statement, and the indication he gives on his map, is quite explained by the fact that in going up and down the Indians or Spaniards or Dutch who traversed this for trade or other purposes that such places had been used for a century or even more. I do not think that it means anything further than that. I emphasize this because it shows that there was a natural barrier.

It was a boundary and the natural boundary of the Dutch colony in 1648 and the boundary which was never passed except as traders went up and down and it was a boundary which had a perceptible effect upon the growth of the colony and which limited its growth in that direction. May I refer the Tribunal to pages 335 D and E; page 336 opposite A; and page 336 opposite C; and to a statement by Rodway in the Venezuelan Case itself at pages 30 and 31; also, to a statement by another witness, Walker, in the 6th volume of the Appendix to the British Case, page 203 E; and to Mc Turk's further statement in the 6th volume of the Appendix to the British Case page 253, B, C; and to the statement in the Georgetown "Daily Chronicle" in the 3rd Venezuelan Counter Case, page 209; and to the statement by Dixon, an English traveller, in the 3rd Venezuelan Case at page 352.

Lord Russell. — One statement here a little surprises me, knowing what has been done in your great country where rapids exist. I should have thought that timber cutting might have prospered on the banks of a river such as this was.

Mr Mallet-Prevost. — The rapids are too great and there is another reason which differentiates it from the same thing in our country, my Lord; and that is that most of these trees are very heavy; many sink in the water and will not float.

Sir Richard Webster. — Yes; it is very heavy wood and has to come in batteaux.

Mr Mallet-Prevost. — I have dwelt at length on the Cuyuni and I will spare the patience of the Tribunal as to the Massaruni and the Essequibo because they have not been traversed so much and it is the lowest falls in those rivers that form the barrier. Now in connection with the other part of this vast region —

Lord Russell. — About that let me ask you to take the Massaruni. Is the Waramambo the first cataract or rapid?

Mr Mallet-Prevost. — No; I should say it was lower than that. The best view of that river that I know of is on the Schomburgk map which gives it very fully. It is somewhat different from the Cuyuni in that it is one great mass for a long distance and then clear water. It is not a series. It is in one of the maps in the British atlas and it is very well shown, but I see that it is not Schomburgk's. I am sorry that I cannot put my hand upon it for the moment but I shall be glad to give citation a little later. The rapids are very continuous for a long distance up and it is apparently a single series and above that comes the clear water.

Now I have spoken about the inaccessibility of this region from the side of the Essequibo and I want now to say a few words as to its accessibility from the side of the Orinoco. The first passage to which I desire to call attention is in the Venezuelan Case, pages 32 and 33. That shows the only connection that there is between the Orinoco itself and the mission savannahs. That is the first link to which I desire to call attention.

The theoretical division of the water basins or watershed between the the Orinoco and the Cuyuni is I may say purely theoretical and has no practical effect of any kind and can be hardly noticed as one goes from one to the other. This is what Barry, an English traveller, who published a book called "A Visit to the Gold Mines in Guiana" in 1886 says, at page 32 of our Case :

“ In the district of Upata which forms a part of this great belt the fertility of the land is said to be inferior to no part of South America, while the climate is deliciously temperate at a height of 1 400 feet above the level of the sea. ”

Mr Justice Brewer. — To ask a question right there, I have understood from your statements or from Sir Richard Webster, I forget which,

that the Imataca range only goes to 300 to 500 feet above the level of the sea.

Mr Mallet-Prevost. — That is quite a mistake, your Honour, and you did not understand it from me. The Imataca range here is 2000 feet.

Sir Richard Webster. — I stated that none of the Imataca range east of the Schomburgk line is higher than 300 or 400 feet; and I further stated that to the westward the hills rose above 1000 feet.

Mr Mallet-Prevost. — They rise about 2000 feet, if Schomburgk's statement is to be taken, if my recollection serves me, at this point, where the Barama and Acarabisi headwaters join. It is 500 feet where it runs down.

Mr Justice Brewer. — I had it floating in my mind but could not recollect exactly.

Mr Mallet-Prevost. —

“ In the district of Upata, which forms a part of this great belt, the fertility of the land is said to be inferior to no part of South America, while the climate is deliciously temperate, at a height of 1,400 feet above the level of the sea. The traveller through this delightful region is perpetually meeting new beauties each time he passes through a belt of forest, where he is sheltered by overhanging trees full of color; and, regaled with a hundred various perfumes of flowers, he emerges on open tracts of moderate extent, not bare, but diversified by clumps of trees dotted about, while the rolling ground reminds him of the most beautiful parts of English country scenery. Park, as it were, succeeds park, till he is at last fairly puzzled where to select to encamp, among so much contended and rival loveliness, and here, at a nominal rent, the cattle breeder may come and establish himself, with the certainty of realizing thirty per cent per annum on his outlay, and the possibility of very much more. Always on horseback in a most lovely climate, and with pure air and clear blue skies, is it a wonder if I felt tempted to leave civilization, and remain in such a spot forever? Upata is a considerable town standing in a plain surrounded by hills, and is 1000 feet above the level of the sea. Here the climate is delicious, the air pure and cool, and the temperature perfectly endurable to Europeans. Leaving Upata on Saturday at 5 a. m. we rode through a delicious country, always ascending, until we reached the highest point of the range, 1400 feet above the sea level. On crossing this a magnificent view burst upon us. Away below as far as the eye could reach, stretched vast undulating plains of waving grass, dotted at intervals with clumps of splendid trees — some in bloom, others in leaf, and of every tint of flower or leaf, from deepest crimson to palest yellow. Occasionally a thin belt of forest marked the

course of a stream, or a denser mass of trees showed where lay a lagoon, while in the extreme distance, grey against the crimson dawn, rose the peaks of the distant mountains. ”

Lord Russell. — This was a poet.

Chief Justice Fuller. — No; an engineer.

Lord Justice Collins. — This is all the Spanish side?

Mr Mallet-Prevost. — Yes.

Lord Justice Collins. — It is so beautiful you can understand they do not desire to leave it.

Mr Mallet-Prevost. — It makes it more significant they did leave it.

Lord Russell. — That is begging the question. My learned colleague suggests a doubt whether they did leave it.

Mr Mallet-Prevost. — I make a statement, which I will show to be good, that in spreading towards the east they did leave that region, and they penetrated this so-called forest barrier that separated them from the Cuyuni, and went on the Cuyuni, that being a purpose then to penetrate that region down to the lowest falls of the Cuyuni.

Chief Justice Fuller. — That description does not limit it; “ there is park upon park ” it went on.

Mr Mallet-Prevost. — I read this to show that the line which might separate the watershed of the Orinoco from the watershed of the Cuyuni is a line that in no sense separates these regions except that the water flows one way on one side and the other way on the other. It is a perfectly easy country to ride through at any point, and in that respect shows the connection between two theoretically different watersheds. I will finish reading this statement, it is very valuable :

“ This does not open by degrees, but, on turning a corner of the road, the whole panorama suddenly lies spread before you in all its impressive beauty. I can never forget it. It is at this point the watershed changes. On the Upata side all the streams and rivers run to the north, and empty into the Orinoco ; on the other side all the mountain streams run to the southward, emptying into the Yuruari, and eventually into the Essequibo. ”

Lord Russell. — It is at Upata he puts the dividing line?

Mr Mallet-Prevost. — No; he journeyed on and left it, he went towards the Cuyuni and speaks of some point intermediate.

Chief Justice Fuller. — Always ascending.

Sir Richard Webster. — I think he is going east towards the highest point of the Imataca.

Lord Russell. — He says :

“ At this point the watershed changes. On the Upata side all the streams and rivers run to the north, and empty into

the Orinoco ; an the other side all the mountain streams run to the southward. ”

Mr Mallet-Prevost. — We show this upon our map with somewhat more accuracy. Upata is placed on what would be the watershed between these various places.

Lord Russell. — It is much about the same on this I think.

Mr Mallet-Prevost. — I might cite, Mr President, a great many passages which go to show the historical connection between these regions in the same way that I have cited passages which go to establish the historical separation between the Essequibo and the region beyond these first falls. The missions were those that gave support to Santo Thomé ; Santo Thomé defended the missions. That region was the one and the occupation of one meant the occupation of the other. They were two regions that depended one upon the other and without taking up the time of the Tribunal in citing references I will mention two or three so that they may appear upon the minutes. The third volume of the Appendix to the British Case, pages 29 and 38 ; also pages 20 and 21 in the British Counter-Case Appendix page 173, showing the dependance of the missions upon Santo Thomé and of Santo Thomé upon the missions.

Mr Justice Brewer. — Geographically speaking are there not many passages which show that from Santo Thomé and the Orinoco far into what is called the Pariacot savannah the passage was easy and a gradual slope up and down ?

Sir Richard Webster. — Yes ; I stated it so.

Mr Mallet-Prevost. — Perfectly.

Lord Russell. — I think the suggestion is that the first difficulty is after you have passed the savannah districts, impenetrable forests. Then lower down you come to the river.

Mr Mallet-Prevost. — It think it is important for me to mention, what is not to be overlooked, namely that Great Britain's extreme claim runs along that watershed which must have been placed there with some reason. I do not care whether it is abandoned or not, but the claim has been made.

General Tracy. — It is abandoned here is it not ?

Sir Richard Webster. — It is not abandoned here.

Mr Mallet-Prevost. — Not abandoned here ?

Sir Richard Webster. — No ; I do not say that. At the beginning of the whole correspondence it was stated —

General Tracy. — It says it has never been made.

Mr Mallet-Prevost. — There is a map, which is used in the Case, and there is a purple line, and that purple line is described in Map No 4 as the “ extreme British claim ” which is not pressed. There is the claim. If it has been made, upon what theory has it been made ? Certainly that there was some separation there and there is known —

Lord Justice Collins. — It was upon a watershed theory I suppose.

Sir Richard Webster. — Certainly; it is stated so.

Mr Mallet-Prevost. — For that reason I want to show how untenable it is.

Lord Justice Collins. — It is in the same connection as the Orinoco delta and that class of suggestion.

Mr Mallet-Prevost. — It has been suggested that some sort of barrier exists between these mission savannahs and the Cuyuni river, a belt of forest; but I know of no instance in which a forest has been considered the natural boundary. Be that as it may, the answer to that, and it is complete, is that historically it has not been a barrier. If that map hanging on the opposite wall, on which the Attorney General has shown the extent of this savannah, be correct the line of it would come somewhere just east of Cura. I do not know if Mutanambo is to be considered a mission in that forest or not. It was destroyed by a Carib attack after a short time and in the same way the Curumo and another mission on the north side of the Cuyuni. I shall give the evidence as to this when I come to treat of the history and I only speak of the geography and most significant is the establishment of the Spanish fort on the south side of the Cuyuni. It is not a mere trading post, but a fort, and a fort that was put there with a specific purpose, and kept there with a garrison for many years.

Lord Justice Collins. — When?

Mr Mallet-Prevost. — Probably as early as 1792; and it continued till the year 1809 at least.

Lord Russell. — Yes; that may be of some importance.

Mr Mallet-Prevost. — Very great importance. I mention it now because it shows, as a matter of fact, this forest was penetrated and passed, and there it was when Venezuela declared her independence from Spain. I say that is an absolute and complete answer to the suggestion that that forest is in any way a barrier; neither the forest nor the river. The Spaniards passed the forest and crossed the river and came to the south side, and that is the condition of affairs when the British took it in 1807. There is the Spanish fort, and it continued there.

Lord Justice Collins. — Marmion suggested it should be built there.

Chief Justice Fuller. — And his note states it in 1793.

Mr Mallet-Prevost. — I will show the records of the garrison there. It is a matter, denied by our friends till we presented the evidence, when they could not; and what they attempted to do was to say it was not on the south bank. I will discuss that when I come to it.

Lord Russell. — You say it disappeared in 1809.

Mr Mallet-Prevost. — The records show it was in existence in that year. How long it existed after I cannot say.

Mr Justice Brewer. — Before you pass to this geographical question, assume it as true there was a forest extending from east of the savannah down to Cuyuni, and all along the Cuyuni and the Cuyuni was full of rapids.

Was it not just as much a barrier to one nation as to the other?

Mr Mallet-Prevost — No; and I have pointed to the testimony of Schomburgk, of Mc Turk himself. From the Curumu, and I might have gone further, to the Uruan, it is sufficient to take the Curumu because we established there were rapids there, and it makes no difference; from *there to there* the river is entirely free; then begin the rapids; then a first series of rapids with one fall, then lower down comes a series of rapids with two falls mentioned, and finally a series with something like 11 falls.

Mr Justice Brewer. — I do not think you caught my question.

Mr Mallet-Prevost. — From this point where the rapids begin it would be as difficult to go down as up; you have to make a return journey, but it begins at this point, not there.

Mr Justice Brewer. — Your contention is there was clear water?

Mr Mallet-Prevost. — Yes; and perfectly navigable.

Mr Justice Brewer. — And first not troublesome?

Mr Mallet-Prevost. — We pass that.

Mr Justice Brewer. — I speak of the geographical condition of things.

Mr Mallet-Prevost. — We pass them, and establish missions, and remain there for years; in other words that forest was not a barrier that limited our growth, the way the lower falls were a barrier to limit the Dutch growth.

Mr Justice Brewer. — That is the point; I assumed there were falls all the way.

Mr Mallet-Prevost. — That is incorrect. Before I leave the question of the geography of the interior I want to mention only one other fact in that connection, and that is the length of the journeys up the Cuyuni. And this is important because later on when we come to speak of journeys up the Cuyuni the length of time that it took them is essential to have some idea how far these journeys extended.

Without turning to the evidence I will cite the facts and give my citations in their support.

According to Alvarado's statement in 1755, the record of which is in the second volume of the Appendix to the British Case page 106 D, he says that from the mouth of the Cunuri, which is this stream (pointing on the map) where it empties into the Uruan, from there down by the Uruan and along the Cuyuni, he gives the time of the journey to the mouth of the Cuyuni as from 25 to 30 days of wearisome navigation; that is going down-stream. Dixon in the third volume of the Venezuelan Case Appendix at page 253 says, in 1894, to go from Georgetown it took him from five to six weeks to get from Uruan and he speaks, in connection, of the comparative ease with which the Venezuelans on the other hand come to the same point, having fresh beef and provisions there, while on the English side they had to live on tinned provisions brought from Georgetown. There is a statement by Mr Weber found in a resolution presented to the

Combined Court in Georgetown in 1894 in which he says it takes 7 weeks to reach Uruan from Georgetown. That is in the Venezuelan Counter Case, volume 3 page 209. In 1893 Rodway makes a statement. I think some of this it would be well to read, and I read this from the third volume of the Venezuelan Case page 349. I am so anxious not to take up time; indeed I fear I often omit passages which I ought to read. This is a statement of Rodway :

“ What is perhaps the most important aspect of this new departure is its bearing on the boundary question. A line of stations cannot but tend to prevent difficulties and disputes — actual possession is after all the best title — and if Venezuela could prove that she or her predecessors ever occupied any portion of the territory in question — which she cannot — something might be said in her favour. ”

“ Another move in the same direction was made in 1892, by establishing a boundary post up the Cuyuni near its junction with Yuruan. Except for its bearing upon the boundary this post is quite useless and might be abandoned if the question were settled; under present circumstances however it is highly desirable that it be kept up notwithstanding the fact that the police who reside there have to perform a very hazardous and long journey of 40 or 50 days to reach it and then are cut off from all communication until relieved. ”

And Mr im Thurn in the third Venezuelan Case page 151 says that it takes from 20 to 30 days from the mouth of the Cuyuni to Tupuquen. Mr McTurk in the seventh volume of the Appendix to the British Case at page 333 C says that he went to Uruan in 13 days, and that it was the quickest journey on record. And in 1896, in the same volume page 336 F, he gives a record of a trip which he made to Uruan and back in 28 days; and in the sixth volume of the Appendix to the British Case page 249 is the record of another case where it took him 29 1/2 days. I should like to read one of the references; that from Dixon at page 353 to which I referred a moment ago, third volume Venezuelan Appendix. He was an English traveller :

“ The man could speak Spanish, so from him I learnt that we were only a few hours distant from Yuruan station, and that the rapids ahead of us were insignificant. This we found to be the case, as we paddled through them without any difficulty, and soon after midday came in sight of our most westerly station a plain frame building surmounted by the British flag, where are quartered an inspector and six policemen. The Yuruan river and its tributary, the Yuruary creek (both of which are a succession of cataracts), enter the Kuyuni on the left bank exactly opposite the British station.

On the Yuruari creek are situated the Venezuelan mines of El Callao, Peru, Chile, Panama, and many others, and the discoloured water flowing from their stamp mills passes down the Creek to the Kuyuni. The surrounding country is undulating, and the forest near the settlements on either bank of the river has evidently been burnt at no very distant date. As regards the British station, both site and building leave room for improvement. As far as I could judge from information obtained from those resident in the district it is a fairly healthy one.

“From here I made several expeditions, and visited the officer in charge of the Venezuelan outpost, who received me most courteously. Their station consists of three or four thatched adobe houses, surrounded by clearings well stocked with provisions and pasture for cattle, and for the mules and donkeys which are used for carrying freight and for riding. There is a very good mule track, connecting the station with the town of Tumeremos, about 30 miles distant, from whence they draw their supplies. This mule track is now being opened out into a cart road, and telegraph communication is being put up to connect the station with Caracas, via Tumeremos. This made me, as an Englishman, feel considerably mortified to think that it takes our Government from five to six weeks to reach their frontier station, whereas the Venezuelan outpost was then being put, and by this time probably is, in direct communication with their capital by road and wire. Also, whereas it costs our Government an immense annual sum to maintain their small number of police at Yuruan on salt and tinned provisions (sent all the way from Bartica Grove, on the Essequibo in paddled boats); within 200 yards on the other bank of Kuyuni is the Venezuelan outpost, supplied with all kinds of fresh food from their cattle farms and plantations.”

That throws light upon the accessibility of this particular point from the two extremities.

Lord Russell. — It shows the British position up the River is not so accessible from Essequibo as it would be from the other direction.

Mr Mallet-Prevost. — Not by a very great deal.

Chief Justice Fuller. — It shows they can get provisions by paddled boats.

Mr Mallet-Prevost. — There is no question as to that; they have gotten there. I suppose anybody willing to undergo the fatigues of that journey can do it. I do not say it is impossible. It is not impossible to cross the Alps, but that is different from whether there are natural barriers which as a matter of fact have prevented the spread of population and of settlement.

I turn now to consider the history of this interior Cuyuni-Masseruni

Basin, and I want to note what evidence there is during the latter half of the 17th century, from 1648 on, showing the connection of the Essequibo Dutch with the Cuyuni and the Massaruni. From 1648 to the year 1680 there is absolutely nothing, no suggestion that the Essequibo Dutch knew anything about the Cuyuni, no mention of the rivers Cuyuni and Massaruni. In the year 1680 we have the first reference to the river Cuyuni, and it is in the second volume of the Venezuelan Counter Case Appendix page 146. It is not necessary to turn to it I will simply read a few lines. This is a statement of Burr's :

“ The earliest mention of the River I have found in the Dutch records is that in Commandeur Abraham Beekman's letter of June 28th, 1680, when that river, temporarily closed by an Indian war, is called our provision chamber! ”

I shall refer to the evidence on that in the first volume of the Appendix to the British Case at page 183. This is the letter which contains the first reference to the river Cuyuni.

“ The trade in hammocks and letter-wood has this year not had the desired success, on account of the war between those [i.e., the Indians] of Cuyuni, Essequibo, and Mazaruni, and the Accoways who live up country; and we have repeatedly, with many but fruitless arguments, tried to persuade the highest Chief to make peace with the aforesaid nation, to that end offering axes and other wares. They even threatened, if we would not let them continue the war, to depart in great numbers to Barima and elsewhere. These being the most important traders in dye, I was, to my sorrow, compelled to desist; and hereby the River Cuyuni, our provision Chamber, is closed. ”

Lord Russell. — That is very significant.

Mr Mallet-Prevost. — Very; it is full of it.

Lord Russell. — But is it not full of significance different from what you mean?

“ Our provision chamber is closed ”;

that is the place from which under ordinary normal circumstances we draw our provisions.

Mr Mallet-Prevost. — Yes. Now will your Lordship allow me to point out another fact established by this, and that is that this provision chamber (I want to get as near as I can to its location) has been cut off. How? On account of the war between the Indians of Cuyuni, Massaruni, and Essequibo. What does that point to? Why, to the junction of those rivers, or near it. It is a war right there! Can a war between the Indians of Cuyuni, and Massaruni, and Essequibo, refer to anything except in that country? I think it is most significant, the juxtaposition of those names.

Lord Russell. —

“ And hereby the River Cuyuni, our provision chamber is closed. »

Mr Mallet-Prevost. — Now will your Lordship recall all I have said today as to the history of “ the Essequibo ”, the use of “ the Cuyuni ” and “ Masseruni ” and “ Essequibo ” and “ Upper Cuyuni ”, “ Upper Masseruni ” and “ Upper Essequibo ”, and use the knowledge we get from that to interpret this. Take the juxtaposition of those three and the war between the Indians in those three that could stop it. I submit it is a demonstration that what he is referring to is a part of the river in the immediate neighborhood of the Essequibo colony.

Lord Russell. — It may have been not far from the junction of the three rivers, but it is pointing to the Cuyuni river as a source of provisions.

Mr Mallet-Prevost. — Yes; and so it continued for years and years. They went fishing and salting there, and got turtles from there and other things. To admit that is one thing and I admit it very gladly; but to say it is an indication that this Great Cuyuni stretching away into the heart of Venezuela and Guiana has any reference to that river is untenable.

Lord Russell. — I do not think they got their fresh meat from the extreme western points of this river.

Mr Mallet-Prevost. — The only provisions referred to coming from there are fish and turtles.

Lord Russell. — Two very good things.

Mr Mallet-Prevost. — Which they got from the falls of the river; they would not have to travel 300 miles to get them.

Now this passage has other significant points, Mr President. It throws some light, in the first place, upon the relations between the Dutch and the Indians at that time. We have heard a deal about the control of the Indians. What sort of control is this, that the Dutch colony in Essequibo is shut off from what it calls its provision chamber by these Indians. They were under Dutch control? Why did not the Dutch make them behave themselves? How did they attempt to deal with the Indians when the question arose? Did they go with any authority? The words of the extract answer.

Now this Indian war continued, and continued to stop the dealings of the Dutch with it and we find a reference to it at page 184 opposite B. This was a subsequent letter, in the same year, from the Dutch Commander to the Company :

“ By reason of the Accoway war in Cuyuni, of which you have heard, the trade in hammocks, especially in new ones, has resulted badly, for no one dares to trust himself among that faithless tribe, so that no more than six common ones could be sent. ”

That again shows a wonderful control over the Indians of those quarters. And at page 185, opposite D, in connection with 1682, the following year :

“ The victuals, and especially the sweet oil, will soon begin to run short ; for, since on account of the war between the Caribs and the Accoways the River Cuyuni no longer furnishes provisions, we have to make shift with the seaside alone ”.

“ We have repeatedly, with many but fruitless arguments, tried to persuade the highest Chief to make peace with the aforesaid nation, to that end offering axes and other wares. ”

What answer did the Indians make?

“ They threatened if we would not let them continue the war to depart. ”

Where? This throws some little light on the question of political control. “ To the Barima. ”

Lord Russell. — I thought we were on the geography.

Mr Mallet-Prevost. — No; I am on the general history. I am trying to take in the history of the interior and dispose of all questions of settlement, trade, and control, at once. I do not know that it will shorten matters; and I point to the first piece of evidence in the year 1680, 32 years after the Treaty of Münster. This is the first evidence we have of any dealings of the Dutch with the Cuyuni, and that is evidence which makes clear their utter inability to deal with the tribes in that region, and when they tried to threaten these tribes they threatened to go off to the Barima and that throws light on whether the Dutch had control in the Barima. What was the Dutch Commandeur obliged to do? He had to threaten these Indians and “ to my sorrow ” was compelled to desist. Then later on he speaks of the old negroes being afraid to go there, and that there were no means for conciliating the tribe. Those are not words used, Mr President, by governors to their subjects.

For a whole year, at least, the Dutch governor allowed himself to be bulldozed by the Indians and to be driven out of this (what he calls, his) provision chamber, and in the following year, 1683 we have the following statement at page 185 :

“ I have sent a negro up in Cuyuni in order, if it be possible, to establish peace between the Akuways and the Caribs, so as by this means to get hold of the wild-pig hunting there as formerly. ”

That throws some light —

(Ajourned till to-morrow at 11 o'clock.)

TWENTY-FIFTH DAY'S PROCEEDINGS AUGUST 8, 1899

The President. — Mr Mallet-Prevost, please to continue your argument.

Mr Mallet-Prevost. — Mr President, I had begun yesterday just before the adjournment to consider the history of the Dutch relations to the interior Cuyuni-Massaruni basin, and in that connection I called attention to the first mention, in the year 1680, of any dealings of the Dutch with that region, and I also called attention to certain passages covering the years 1681, 1682 and 1683 which showed that by reason of the continuation of an Indian war between the Indians of the Cuyuni and Massaruni and Essequibo, the Dutch were being excluded from that territory, — a war which the Dutch endeavored to put an end to, but which they were powerless in any way to effect.

From the year 1684 to the year 1686, there are a number of references in the evidence to the presence of others than Essequibo Dutch in this region. Many of these references have been read in connection with the coast region, because many of the French and other traders who went to the coast region also penetrated into the interior, and consequently I shall only briefly read half a dozen of these references with which the Tribunal is familiar without troubling the Tribunal to turn to the particular passages. For instance, in the year 1684, we have the statement made by the Commandeur in Essequibo that Gabriel Bishop and other interlopers from Surinam spoil not only that trade, that is in the Barima, but buy up all the letter-wood which is there both abundant and good, as well as madder oil and hammocks, and then he states that they traverse and overrun the land right up to the river Cuyuni itself. That will be found in the first volume of the Appendix to the British Case at page 186.

Lord Russell. — You are drawing here a distinction between the Dutch from Essequibo and the Dutch from farther south?

Mr Mallet-Prevost. — I am, my Lord, — from Surinam. Then there is, in the year 1684, also a distinct recognition of the fact that the Spaniards were in that Cuyuni region. On page 186 of the first volume of the Appendix to the British Case, opposite D, there is this stated by the Commandeur :

“ The Copaiba and Curcai are much bought up by the Spaniards. The war which various nations — ”

of course that is referring to this same Indian war in the Cuyuni —

“ there carry on with one another has been the cause that

Daentje the negro has not been able to get so far up among that nation. ”

And again at page 188 of the same volume, opposite C, we have the further statement by the Commandeur of Essequibo that :

“ Daentje, the negro, has come back two weeks ago without bringing with him a single pound of balsam. ”

On that same page 188, opposite C, there is also a reference to the French :

“ The French in the Barima come and fetch them even as far as up in the Cuyuni, and have burned there the houses of the Pariacots — ”

that of course refers to the Indians in the Pariacot savannah —

“ and have driven them away. ”

And then again on page 201 of that same volume opposite E, there is a further reference to the French stating that the French are making expeditions through the country up there (there referring to the Cuyuni) in order to buy up everything.

So that there is a distinct recognition of the fact on the part of the Dutch authorities that during these years when they themselves were unable to obtain anything from the Cuyuni, the Surinam traders were in that region, and the French and the Spanish.

Excepting references to the horse trade (which I shall take up in a moment) a few years prior and subsequent to the year 1700, between the year 1693 and the year 1724, the only mention of trade by the Essequibo Dutch to this region is to be found in the Kijkoveral Diary for the years 1699 to 1701, and it is in view of that fact, which I state unhesitatingly, that I call attention to the claim that is made on behalf of Great Britain by the Attorney General as to the extent and continuance of Dutch trade through this region during these years. The Attorney General says on page 209 of his opening speech :

“ I was about to call your attention to the first practical reference to the Cuyuni, I do so for this purpose. I hope today to be able to show you the theory put forward by my learned friends that the Cuyuni was under the control of the Spaniards from the end of this century, that is 1680, is absolutely unfounded, and that there is no evidence of any kind. On the contrary when the mission settlements went to that part of the territory in 1720 they went on, unopened, unvisited, and undeveloped territory and settled there. I trust I shall have time today to expand that argument and get rid of it. From the Dutch side a very different state of things occurs. I shall have to show

continuous operations at the end of the 17th century, from 1680 onwards, right through the 18th century in the river Cuyuni. The first mention shows that the Cuyuni was to them an established fact, that is to say something which they had long known and made use of. It is from this date that we have something like a connected history and it is important to see how the Cuyuni is spoken of. ”

Now I state that, excepting the references to trade which are made in the diary of Kijkoveral for the years 1699, 1700, and 1701, there are no references whatever, from the year 1693 to the year 1724, to any Essequibo Dutch dealings with this region, and excepting also the horse trade and to that I now invite attention.

In the second volume of the Venezuelan Printed Argument, at page 415, our position with regard to that horse trade is stated. I read from the bottom of that page :

“ The most important trade in the Cuyuni valley at this period was the horse trade. The headquarters of this trade were in the savannas near the upper Cuyuni, where the Spaniards raised and pastured their horses. In the previous year, the Commandeur had reported that the trade in horses up in Cuyuni does not go as briskly as it used to, and it was doubtless with a view to stimulate this trade that he conceived the idea, in the spring of 1703, of sending an outlier to stay there. In that very summer he reported that the Spaniards will no longer permit any trafficking for horses on their territory. ”

I want to point out what I think was made clear finally in the discussion by the Attorney General upon this point, clear by reason of questions which were put to him from the Bench, that the essential allegation in this argument is that the trade in that region was under the control of the Spaniards, and that when the Spaniards forbade it to be carried on, it stopped. We have stated that the Spaniards raised and pastured their horses there. I think that there is evidence of that fact : but whether that be true or not, the essential thing here is the control of that region, and it is from that fact that the Attorney General endeavored to get away when he alleged that the trading was not done in the Cuyuni ; that it was done beyond ; that the use of the word “ Cuyuni ” did not refer to that region ; that the trade was done beyond the Orinoco ; that the horses were brought from beyond there ; and finally he continued to show how in after years the horses were trafficked in the Aguirre and from the Orinoco, going to rebut the statement made on our part that this trade was in the river Cuyuni itself. That is the essential point, that it was in that region, and that it was under the control of Spain : and I propose now to call attention to the evidence which sustains that position.

Lord Russell. — One would suppose *prima facie* that the trade in

horses would be where horses were raised and that they would be raised where there was good grazing, and therefore *prima facie* it was in the savannah.

Sir Richard Webster. — Yes.

Mr Mallet-Prevost. — Yes.

Lord Russell. — That is what one would suppose.

Mr Mallet-Prevost. — And that is the reason why we have stated that the horses were raised there; that the traffic was there, and that the trade was there; there is no doubt at all, and I shall show it.

Lord Russell. — That is a considerable way from the Cuyuni.

Mr Mallet-Prevost. — Where, my Lord?

Lord Russell. — The savannah does not reach right down to the Cuyuni.

Mr Mallet-Prevost. — Oh! it is certainly not very far from the main branch of the Cuyuni; but it is all in this Cuyuni region. All that savannah is in that Cuyuni region.

Lord Russell. — It is in the mission region, in fact.

Mr Mallet-Prevost. — Yes; it is in the mission region, but the mission region is in the Cuyuni region.

Lord Russell. — No doubt part of it is.

Mr Mallet-Prevost. — That is another question.

Lord Russell. — You may be right and I may be wrong, but I did not understand Sir Richard Webster to say that all the horses came from north of the Orinoco.

Sir Richard Webster. — Certainly not, nothing of the kind.

Lord Russell. — I did not understand it so. However, it is not important.

Mr Mallet-Prevost. — I will simply refer to the argument without taking up the time to read it. There are some questions put by Lord Justice Collins which I think make the matter clear. This is at page 241 of the argument.

Sir Richard Webster. — Those questions are entirely in accordance with my argument.

Mr Mallet-Prevost. — Lord Justice Collins asked :

“ Would it make any difference if it was a Spanish trade or not, provided the territory in which the horses were reared was not Spanish?

Sir Richard Webster. — Not the least, my Lord. My whole point is to demolish the argument on the other side that they were rearing horses in this mission savannah in order to try and antedate the occupation by the Spanish for half a century.

Lord Justice Collins. — The argument you are endeavoring to meet is the allegation that there was evidence of possession and control by reason of their carrying on the Spanish trade in this district? ”

It is a question of carrying on that trade and of controlling it. And Sir Richard Webster answered :

“ Precisely ; they say that the most important trade was the horse trade that was carried on in the savannahs of the Pariacot. I say that is untrue. ”

I am reading now the Attorney General’s language. He said that this trade was not carried on in the Pariacot savannahs. Then he says :

“ They say it was carried on by Spain in the Pariacot. It is my case that there would have been Indians there.

Lord Justice Collins. — It is no part of your case to consider if they were Spanish horses at all?

Sir Richard Webster. — Not the slightest. ”

So that the question is as to *where* the trade was being carried on. We state that it was being carried on in the Cuyuni, that is to say in those savannahs. Sir Richard Webster here states distinctly that his point is that that is untrue ; that it was not being carried on in that region, and then the subsequent references which he gives were given for the purpose of showing that the horses were smuggled round Santo Thomé and that they had practically nothing to do with the savannahs in any way. The position that we take up in this matter is that wherever the horses were raised, the trade was carried on in these savannahs. They were probably raised in those savannahs, or possibly part of them were. It is quite impossible and unreasonable, as it seems to me to assume that if a trade was going on there the horses were not pastured and were not raised there, at least to some extent, and hence there was some occupation. But that is not the point. The point I want to bring out is this, that there was a horse trade going on in those mission savannahs.

Lord Justice Collins. — The trouble is that the missions were not started until the year 1720 and just at the date you are now dealing with none of the missions had been established in the savannahs.

Mr Mallet-Prevost. — My Lord, I am not referring to the missions. I am referring to a trade in that mission area.

Lord Justice Collins. — Up to that time apparently on the evidence, there was not any occupation in the sense of permanent settlements, so as to raise horses and so on, in what is called the missions area.

Mr Mallet-Prevost. — There were no missions there.

Lord Justice Collins. — That is the reason why the suggestion of their going far beyond the Orinoco was introduced.

Mr Mallet-Prevost. — But my point is that whether they came from beyond the Orinoco or not, the trade was in those savannas, and that position is contradicted by the Attorney General. I am going now to refer to the evidence on that point, and to show that that trade that was

carried on in that territory, wherever the horses came from, was a trade that was prohibited by Spain, and because of that prohibition the trade came to an end.

Lord Justice Collins. — If the persons who had horses refused to sell them, the trade could not go on.

Mr Mallet-Prevost. — But the trade could not go on because it was prohibited by Spain, and that is the point I want to make.

Lord Russell. — Is there any evidence of any horse raising or cattle raising or occupation by the Spaniards of what you call the savannah region before the year 1720?

Mr Mallet-Prevost. — My Lord, the evidence in that regard is in connection with this very horse trade and is in line with what your Lordship pointed out a moment ago, that it is natural to suppose that where the trade went on that there the horses were raised ; and it is precisely upon the ground that your Lordship has taken, that we have made the assertion that these horses were being raised there. Now of course that was before the Capuchin missions were established there. They did not go there as Lord Justice Collins has very correctly said until the year 1720, but it is a mistake to assume that the Spanish had no dealings with that region prior to that, as I shall show when I come to deal with the Spanish relations that they had right here. We have an evidence of it. There was a trade in those savannahs, and that implies the raising of horses there ; hence we have that evidence.

Mr Justice Brewer. — In other words, the establishment of the missions was not the first Spanish occupation.

Mr Mallet-Prevost. — Not at all.

Lord Russell. — That is exactly what I want to see. My present impression is that it is, I mean as far as the evidence goes.

Mr Mallet-Prevost. — I am relying very strongly upon the very logical conclusion that your Lordship pointed out a moment ago, that where there is a trade that is evidence that there is a raising there. It seems to me that it is perfectly sound. I cannot get away from it.

Lord Justice Collins. — They might have been raised on the other side of the Orinoco or south of the Orinoco, and then have traversed all that country afterwards.

Mr Mallet-Prevost. — They might have been, of course, but the likelihood is as the Lord Chief Justice of England has pointed out.

Lord Justice Collins. — I mean, it was in consequence of what you said that you could not get out of the logic of the matter that I made that observation to you.

Mr Mallet-Prevost. — Apart from all that, I am referring to this horse trade to prove that the region was under the control of Spain and that when Spain said it must stop, it stopped, and that is what I am going to prove. I first refer the Tribunal to the first volume of the Appendix to the British Case, at page 212, opposite E.

The President. — That is on the same question of this horse trade?

Mr Mallet-Prevost. — Yes; of this horse trade, Mr President. There are a number of references to it.

“ No slight advantage, moreover, has through you been brought the Company by your having started up in the River of Cuyuni a trade in horses, which cost the Company much money for their purchase here — ”

and so on. That is the first of a large number of extracts which refer to the trade as a trade in the river Cuyuni. The Attorney General in commenting upon this passage and upon those that follow said that it meant by means of the river Cuyuni. I say that that is a forced construction of the words, and that there is not a single extract which refers to this horse trade in the Cuyuni that warrants any such interpretation. The Attorney General has been very ready in connection with other words to insist that the words meant what they said, and I am entitled to press the same point here, and to say that when these documents speak of a trade in the river Cuyuni, that they mean just exactly what they say and that they did not mean a trade in the river Orinoco or anywhere else.

Lord Russell. — The words are “ up in the river of Cuyuni ”.

Mr Mallet-Prevost. — Yes, those are the words.

Lord Russell. — It states “ up ”.

Mr Mallet-Prevost. — That is up above Kijkoveral. The Dutch word is “ boven ”, that is above in the river of Cuyuni. Then on page 213 opposite D, there is another statement in connection with this trade :

“ Respecting what you say in regard to the horses, that I am to write you how much each horse would cost us, I cannot state it exactly, since in merchandize it sometimes amounts to 20 guilders and often again to a little less, as you can see from the books. Again, you wish to know at what price I could dispose of them ; of this also I cannot inform you, inasmuch as almost all the plantations of the free planters are sufficiently provided with horses, and, if they need any, they have them got from Orinoco, at quite as low a price as is paid for the horses bought for you up in Cuyuni. ”

And those expressions are actually made use of by the Attorney General to prove that the trade was in Orinoco and not in the Cuyuni.

Sir Richard Webster. — I said nothing of the kind. If you will read what I said on page 239 you will see there it is exactly in accordance with what was said from the Bench. I said nothing of the sort that you have represented.

Mr Mallet-Prevost. — On page 232 of the Attorney General's speech, when he makes a distinction between these and uses this very phrase to show that it could not have meant Spanish horses in the Cuyuni —

Sir Richard Webster. — That is a different point — nothing about the Cuyuni. It is on page 240 of the revise.

Mr Mallet-Prevost. — It is page 232 of the original.

“ Again I call attention to the fact of the contrast there being between horses which the free planters were able to buy from Orinoco, — you know, Sir, what that means, that territory which could be reached by going to the Orinoco and possibly crossing to the north side of the Orinoco, — as compared with horses which the Company could buy up in Cuyuni ”.

Sir Richard Webster. — That is a later one; my comment on the passage you refer to is at page 231.

Mr Mallet-Prevost. — I beg you pardon; you have just read the passage I have, page 232 of the original, just above the words I am now repeating, and this is your comment on this very passage :

“ Again I call attention to the fact of the contrast there being between horses which the free planters were able to buy from Orinoco, — you know, Sir, what that means, that territory which could be reached by going to the Orinoco and possibly crossing to the north side of the Orinoco, — as compared with horses which the Company could buy up in Cuyuni. Again I point out there is not the slightest reference to the fact that they were Spanish horses or bought from Spaniards. ”

As far as I can understand that point it is intended to prove that because the Dutchmen were getting horses from Orinoco for the Spaniards, therefore they could not have been buying horses from the Cuyuni from the Spaniards. If this passage means anything it means there was a trade for horses up in Cuyuni; that is the point I wish at this time to make.

The next passage in order of date is from the British Counter Case Appendix Diary, page 52. I want to go rapidly through the various references to this horse trading to show that in every instance it is a trade referred to in the Cuyuni and that is the fact denied by my learned friend on the other side.

Sir Richard Webster. — With great respect it was never denied. I do not want to interrupt you again; it is my point it was in the Cuyuni.

Mr Mallet-Prevost. — Then it is not necessary to give a number of references. I am glad to hear the Attorney General admit that this trade was carried on in the Cuyuni.

Lord Russell. — Between the Cuyuni and Orinoco?

Sir Richard Webster. — What I said was, it was not carried on in the Pariacot savannah.

Mr Mallet-Prevost. — Then I am going on to read the references. The moment I press a point — I think we will save time by going through it. The record will show what the Attorney General said.

Sir Richard Webster. — Certainly it will.

Mr Mallet-Prevost. — I read from page 52 of the British Counter-Case Appendix between A and B :

“ Monday August 17. This morning a goodly parcel of trading wares was given to the old negro traders so that they may set out — ”

Lord Russell. — What year was this?

Sir Richard Webster. — 1699 or 1700.

Mr Mallet-Prevost. —

“ so that they may set out for the Upper Cuyuni tomorrow to procure some horses by barter; ”

it is 1699. That refers to the Cuyuni as the destination of those traders and they go for the purpose of getting horses at that point. That was their destination and we have just below that under the date of August 18, another entry;

“ This morning the negro traders set out for the Upper Cuyuni in order to procure some horses, &c., by barter. ”

They did not set out for the Orinoco by way of the Cuyuni they went up the Cuyuni to get horses in the Cuyuni by barter. At page 60 of the same volume opposite C:

“ In the afternoon some Caribs arrived with annatto dye and fresh fish, and after being paid, again departed. Jotte, the old negro, also came down with thirteen planks for the use of the fort. Towards the evening there appeared the free planter, Mr Johannis de Wilde, to speak to the Commandeur, but since his Honour has not yet returned from the sea-coast, this was in vain.

Two Caribs also arrived from the Upper Cuyuni, bringing tidings that the old negro traders who had set out from the fort on the 17th August for the purpose of purchasing horses, had not set out from the dye store until the 20th September. ”

Showing that the Caribs came from the Upper Cuyuni. The other had been the destination of the traders. This is where they came from and it is that locality which is spoken of as the locality where the trade in horses was being carried on.

There are three other references which give no particular information on this point but that make the record complete. I cite page 82 B, page 86 E and another, page 87 A, and again 87 E, but we have another at page 90:

“ To-day the usual Divine Service was celebrated by the clergyman, and the catechism was taught in the afternoon, after which celebrations there arrived here from the Upper Cuyuni the Company's old negro traders Anthonij and Ceesje, bringing with them three horses, ”

and so on. That again gives the source from which those horses were obtained. It was from the Upper Cuyuni. Turning now to the Appendix to the British Case, volume I, page 221 —

Chief Justice Fuller. — We have the same statement referring to the year 1701.

“ The trade in horses up in Cuyuni does not go as briskly as it used to. ”

Mr Mallet-Prevost. — Again in the 2nd volume of the Appendix to the Venezuelan Case — I take these entries in the order of date — at page 67.

Lord Russell. — It is to be noted in that passage you have referred to, at page 221, the traders are there spoken of not as Spanish but as negro traders.

Mr Mallet-Prevost. — Yes; these were the negro traders sent out by the Commandeur for the purpose of bartering in these horses and I refer to these extracts to show the locus of the trade which it has been denied was in Cuyuni.

Now I read from the bottom of page 67 of the 2nd volume of the Appendix to the Venezuelan Case :

“ The Council having met with nobody absent the Commandeur in addition to the communication made before once more brought before it the arrival — ”

and so on; and then lower down :

“ Inasmuch as we by the impending war might perhaps be brought into straits for provisions, and as moreover there is already a considerable difficulty, especially as to horses, needed for the newly made [sugar] works of the free inhabitants, and as the Company has not enough to accommodate any of them, and as, moreover, the horses from above are not being any longer brought down as formerly, and this might get still worse in case of war —

of course, that referred to the Spanish war —

[for these reasons] the aforesaid Commandeur requests the Councilors to consider what should be done in this matter; which having by them been duly considered, they have resolved by unanimous vote (notwithstanding the prohibition last sent by our superiors), for special and urgent reasons, and moreover under the continuous pressure of the interested public, that they agree and consent hereto, the more so because all the lands where we carry on our horse-trade, are under the King of Spain, as we know by experience from the prohibitions we have already met in the trade to Orinoco; ”

That was a trade in horses to Orinoco but all the passages I have read prove conclusively there was a trade in horses in Cuyuni and here we have the statement by the Court of Policy in 1701 that all the lands where

this horse trade was carried on was Spanish territory; and we have the Court of Policy pointing out the fact this trade may be stopped by reason of the war. Why? Because it is Spanish territory. I call attention also to a document at the bottom of page 69, which is two years later :

“ I am very sorry to be obliged to notify you that owing to the present war no horses are to be had above here as formerly—”

of course, that means the Cuyuni —

“ inasmuch as those Indians think they stand under the crowns of Spain and France and this trade is thereby crippled.”

What does that mean? It means that the trade as far as it was carried on by the Indians with the Dutch in that region, and I suppose part of this trade was carried on by the Spanish Indians who had gotten the horses from the Spaniards — they regarded themselves as under the crowns of Spain and France. Of course, they did not distinguish at that time, during the war of the Spanish Succession, when the French and Spanish stood together. Those Indians felt they were under that power and that power prohibited the trade and hence they could not continue it. I say that is proof positive that this was a trade controlled by Spain and continued as long as Spain allowed it and was put an end to in the Spanish Succession War because Spain put a stop to it and would not allow it in her territory and because the Indians would not trade with the Dutch knowing they were not their own sovereigns.

Lord Russell. — Is there any reference to the Spaniards carrying on this trade?

Mr Mallet-Prevost. — Does your Lordship mean the Spaniards with the Dutch?

Lord Russell. — No.

Mr Mallet-Prevost. — No; there is nothing.

Lord Russell. — Is there anything to show the horses were raised by Spaniards in the pariacot savannah or any part of it and sold there?

Mr Mallet-Prevost. — The evidence is limited to this. They bought them in the Cuyuni. Whether they bought them from Indians or Spanish Indians or Spaniards themselves does not appear in the evidence, but it does appear that when this war came and the Spanish prohibited it, that trade stopped.

Lord Russell. — What I mean is, one would have thought if they were raised in this pariacot savannah as it has been called, which I should have thought was *a priori* very probable if the pasturage was good, that we should have had some account of some form there of breeding establishments, some evidence of Spanish control there. Is it clear that these were not wild cattle caught by the Indians.

Mr Mallet-Prevost. — Evidently they were not wild. It was a question of trade. Again the answer I must make to that question is one I have made to a number like it, viz : that as far as the Dutch trade was

concerned it was a trade carried on by the Company and of which we have the record but if they were trading with Spaniards in the Pariacot savannah it was with individual Spaniards, not with the representatives of Government or Spanish authority and hence no record.

Lord Russell. — There would be records of some houses or stables or some habitations of Spaniards; one would expect that.

Mr Mallet-Prevost. — It might be, but the absence of any such evidence here it seems to me can weigh very little one way or the other.

Lord Russell. — Is this a trade in wild horses that was carried on at this time, trading in a place which was regarded as a Spanish possession — a trade carried on by Indians but not Spaniards in the ordinary sense.

Mr Justice Brewer. — Spanish, of course, do not keep any account of any business transaction.

Mr Mallet-Prevost. — None at all; it is all a question of individuals.

Lord Russell. — That is natural enough. Still I come back to the other point which needs explanation to my mind. Have we any account of any city or village such as the presence of the Spaniards would probably bring with it earlier than 1720?

Mr Mallet-Prevost. — If I were endeavoring to establish this proposition that the trade had been going on in the Cuyuni, in those savannahs, and had no evidence of the fact, then, it seems to me, that my position might properly be criticized that there was no evidence to show the Spaniards or anybody else were in that savannah; but I come with a certain amount of very clear evidence showing there was a trade there. Now if there was a trade there, there were people with whom the trade was carried on and those people, by the evidence I bring to prove the existence of that trade, felt the prohibition of the Spaniards. I bring forward the proof that people were trading with Indians or Spaniards — I do not care which — and that those traders were under the control of Spain; and when occasion arose to have that trade stopped it was stopped. It seems to me I have every evidence of control in that region and over that trade there, and I present that evidence in connection with this trade.

The President. — Did not the missions later on take part in this trade?

Mr Mallet-Prevost. — Yes; there is no question they did, later on. They raised very large herds. In one year there was an increase of 130000 head. I refer to years before the Capuchin missions went there; and there is evidence showing the Spaniards were dealing with this region, and with that near Santo Thomé, in 1680. They had established some missions, I think, before that date, of Pariacot Indian. Now those Pariacot Indians came from this Pariacot savannah. The evidence points to that and shows that, long before, the Spaniards were doing with that Pariacot savannah precisely what they did later with the interior

down south of the Cuyuni and south of the Massaruni, and in Essequibo. In the whole region missionaries were going through that region, gathering in the Indians, bringing them near to the Spanish settlements, founding missions, civilizing them and making them Spanish subjects and Spanish citizens, and that was years and years before the Capuchin missions went into this region. Now when I come to the year 1700 and a few years before and a few years after, when this Spanish trade continued, I showed by the very extract that mentions the trade that it was a trade there in those savannahs and showed also that that trade was a trade which came to an end because it was forbidden by Spain and because the individuals, be they Indians or private Spaniards, there conducting the trade with the Dutch, regarded themselves as under the Spanish crown and would not trade longer with the Dutch when the war of the Spanish succession came.

There is only one mention of this trade after the year 1703; it is a single incident which is in the British Counter Case Appendix, page 159.

Mr Justice Brewer. — Do you mean before 1720?

Chief Justice Fuller. — What was that observation you made; there is only one instance of what?

Mr Mallet-Prevost. — Only one reference, after 1703, to this horse trading in the Cuyuni after the war of the Spanish Succession.

Chief Justice Fuller. — You do not put any limitation on it.

Mr Mallet-Prevost. — I was referring to the horse trading which was prohibited by Spain at this time. I know that the Attorney General in opening, after jumping from the year 1706 to, I think, 1720, or thereabouts, 1724 I think, went on and gave a list of trading in horses all the way down to 1794 as though that had anything to do with the prohibition during the Spanish Succession war, and having that in mind I said the only instance was in the year 1706 and the mention of that is found at page 159 of the Appendix to the British Counter Case at the top of the page :

“ All the Councillors and Master Planters of this Colony of Essequibo,

Are hereby informed by the order of the Governor that if any of you are inclined to have some horses fetched from the Upper Cuyuni, you should get your men and trading wares, etc., ready and come next Friday the 10th of this month. ”

That is the last and the only reference. There is a statement in regard to the year 1707, which shows that the trade was entirely stopped, in the Second Appendix to the Venezuelan Case. I had a reference to Professor Burr's statement, but I will refer to the evidence upon which he founds that statement at page 72 under Document No 80 where Beekman who at that time was Commandeur in Essequibo writing to the Company says we cannot as easily as formerly get the horses from above and in such quantities as they are needed.

Now in order to attempt to prove that there were no horses here during this time recourse has been had by my learned friend to a statement at page 191 of the Appendix to the British Counter Case, at D, a statement made in the year 1750, as to the condition of these savannahs when the Capuchin Missionaries went there in the year 1720. Between D and E we find this passage which was quoted against our contention.

“ These lands, the said Friars reclaim and cultivate with great zeal and labour; and it is likewise due to their example and encouragement that cattle abound in those fields, for they started with a cattle farm where there was neither cattle, birds, nor other flesh, except game, and consequently all had to be acclimatized to the country. ”

The Spanish of those words

“ *res ave ni otra carne que la de caza* ”

are more literally translated

“ beef, birds or other meat except game ”

and indicate clearly that the reference is entirely to edible flesh; it does not have any reference to horses. As I stated a moment ago, as though apparently there were no break whatever in this horse trade, the Attorney General has taken the trouble to run down a large number of references beginning with the year 1724 which was many years after the war of the Spanish Succession came to an end, and cites an instance in 1724 and in 1736 and all along down to 1794.

Lord Russell. — When do you say the prohibition had effect?

Mr Mallet-Prevost. — Very shortly after the beginning of the century. It is referred to first in 1702 and after that there is only one reference to any horse trade in that region.

Lord Russell. — That is an instance where the person asked : Do you want any horses brought from the Cuyuni? If so you will make arrangements to send for them.

Mr Mallet-Prevost. — Yes; which is not evidence they were got from there.

Lord Russell. — It does not say anything about the prohibition or there being any difficulty in getting them in consequence.

Mr Mallet-Prevost. — In the next one the difficulty was distinctly stated.

Lord Russell. — I missed that.

Mr Mallet-Prevost. — At page 72 of the second volume of the Appendix to the Venezuelan Case

“ We cannot get them as easily. ”

Lord Russell. — Yes; but that does not say about the prohibition.

Mr Mallet-Prevost. — No; but the earlier ones did, and this follows

on that; that we cannot get the horses there as easily as before. In this connection, in connection with this horse trade, I may dispose very briefly of a so called Dutch post in these savannahs in the year 1703. I think all the evidence will be found in two pages of the second volume of the Venezuelan Case Appendix, pages 70 and 71, and I will state it in a few words. On page 70 there is a muster roll of the employes and under that is :

“ Up in the savannah six weeks by boat, Outlier in Cuyuni Allert Lammers of Meenen, Outlier. ”

And on the opposite page there is a statement at the top of the page,

“ Allert Lammers, of Meenen, outlier in Cuyuni. ”

That was on May 20th. On October 1st he had certain wages : in the opposite printed column :

“ From the Company, £ 10. 18. 4 for wages for 4 months 11 days, at f. 15 per month, earned by him from 20 May, 1703, up to this day, when, on account of insubordination, he is, by sentence of the Governor and the Court, placed as sailor on the yacht “ Rammekens ”.

That is the first and last ever heard of that post. It is uncertain whether this man ever went there; he appears to have been appointed on the 20th May. The place is referred to as six weeks up, by water. Allowing six weeks for him to go, and recognizing the fact that he was removed for insubordination, it would take six weeks, if he went there, for the complaint to come down. Assuming he did anything there, then he would have to be sent for, brought down and dismissed; and the result of it is, if we take these notes, he never went there. If he did, it is a mere incident in connection with this horse trade that is hardly worth mention.

There is another subject somewhat more important in this connection and that is the position taken by the Attorney General on the subject of *Creole Dutch*.

Lord Russell. — At the bottom of that same page there is a reference to horse trade going on.

Mr Mallet-Prevost. — That is 1703.

Lord Russell. — In 1706.

“ That the Company's horses purchased up country in Cuyuni should always die, and the horses belonging to private individuals never, is but a false tale of a party of scoundrels—”

and so on.

Mr Mallet-Prevost. — That is a reference I do not have.

Lord Russell. — No; it is impossible to have all; but why do you assume that this man Allert Lammers was only appointed on the 20 May 1703.

Mr Mallet-Prevost. — It says so.

Lord Russell. — No, I think it does not say so. It says,

“ earned by him from the 20th of May 1703 ”.

Mr Mallet-Prevost. — He is not mentioned in any of those muster rolls from year to year and he is not there.

Lord Russell. — That would be an answer certainly.

Mr Justice Brewer. — The entry is May 20th 1703, enrolled in the Company's service.

Mr Mallet-Prevost. — Yes, that is when he was appointed. It is a matter of very little consequence.

Lord Russell. — Yes, that looks like it certainly.

Mr Mallet-Prevost. — I want to call attention to the position the Attorney General has taken on the subject of *Creole Dutch* and to read in that connection what he said so that there can be no statement I am placing in his mouth words he did not utter. I read from page 242. The Attorney General had been speaking about this horse trade and the President asked him what was the language that the Dutch were speaking with the natives :

“ **Sir Richard Webster.** — As far as I can tell, Sir, almost entirely, so far as anything in this dispute is concerned, in *Creole Dutch*. It is a part of the case, Mr President, on which I place great reliance, but it is not actually on the line at the present moment. Of course when they got away to the far distant country, they would come to the Spanish Indians or they might come to Spaniards themselves. Then, as Lord Justice Collins has pointed out, the contract for the purchase and buying of the horses might be with the Indians; but I am speaking of the people with whom the transactions were conducted, and you will find that they would be conducted in *Creole Dutch*.

The President. — Then, you say that the trade was in the Dutch language with the Indians?

Sir Richard Webster. — On this territory, certainly, Sir. Then, Mr President, if I might ask you kindly to look at page 82, between B and C, of the Counter Case Appendix, it says :

“ At about 4 o'clock in the afternoon there appeared here some of the Company's horsekopers with the brother of the free planter Pieter Tollenaar, also licensed, and having been out for that business, reporting that they had obtained for the Honourable Company ten animals, one of which, having broken its leg, they had been obliged to kill and leave behind. ”

Mr Justice Brewer. — In reference to the President's question, is there evidence you can point to which shows that con-

tracts were made in the Dutch language rather than in any other?

Sir Richard Webster. — No, certainly not. I said the contrary. I stated but a moment ago to the Lord Justice that when they bought the horses I should think it is highly probable that they frequently bought them from a Spaniard, or bought them from an Indian. ”

That is exactly what I have been arguing that these were probably bought from Spaniards as well as from Indians up there :

“ I was speaking of the conduct of the business in this territory itself, that so far as what was done with the Indians themselves in all relations — I am not referring to horses alone, but as far as I can tell the language used was Creole Dutch.

Mr Justice Brewer. — Is that statement made merely on assumption from the fact that there were Dutchmen there, and not from any evidence in the record?

Sir Richard Webster. — You may say that it was an assumption from the fact that they were there, but it goes further: there is specific evidence in the record to which I will call attention. ”

And lower down.

Sir Richard Webster. — One moment,

“ It arises of course at a later period, ”

Mr Mallet-Prevost. — I have no objection to reading it all; you specify the year later on :

“ But it arises, of course, at a later period. I have labored under the infirmity, Mr Justice Brewer, of only being able to address my mind to one point at the moment, and the point I am now asking you to kindly follow me upon is the demolition of the argument that there were Spaniards in the Pariacot Savannahs, — you know what I mean by that, — breeding horses and controlling the horse trade.

Lord Russell. — The question put by my learned colleague was quite in line, Sir Richard, with the matter you are on.

Sir Richard Webster. — I think so, my Lord, and I do not think I overstated it. I certainly did not mean to refer to the contract of purchase of the horses.

The President. — No; the prevailing language in the district in question was Creole Dutch.

Lord Russell. — Yes.

Sir Richard Webster. — And I shall show it beyond all question later on. ”

Lord Russell. — Surely I am not to be cited as giving evidence to that effect.

Mr Mallet-Prevost. — No; it ought not to have been taken down perhaps, but I am reading from the notes before they were revised :

“ **Lord Russell.** — You say now that there is evidence of that, and we can judge of that for ourselves when our attention is called to the evidence.

Sir Richard Webster. — Certainly.

Lord Justice Collins. — That would be before 1720 or whatever the time was that the settlement began?

Sir Richard Webster. — Yes, my Lord. ”

I say *there* is a statement by the Attorney General that he has evidence to show that Creole Dutch was in use before this, that is before 1720.

Sir Richard Webster. — No; nobody understood it.

Mr Mallet-Prevost. — I understood it and I understand it now when I read your language.

Sir Richard Webster. — Then you misunderstood me.

Mr Mallet-Prevost. — Now when the Attorney General came to deal with this subject the first reference he gave (and it is the earliest reference in the record as to the existence of any Creole Dutch) was so far from being the year 1720 it was the year 1839 according to the British Digest of evidence, under the word Creole Dutch, and it is to be supposed all the evidence on this point has been collected by our friends on the other side. The earliest mention of Creole Dutch is in the year 1839. Of course if the Attorney General did not mean to say it was in use in 1720 he has the right to correct himself, but I have read his language which is clear upon the point. 1839 is the earliest reference in this Digest, more than 100 years later, and the earliest reference the Attorney General gave. I think he gave one reference before that, I think 1834 or 1836, I do not remember at this moment, after 1830, more than 110 years after the date he states here that the Creole Dutch was in use.

Now prior to 1830, and indeed in many instances after 1830, that their communications were conducted through interpreters is clear from the mass of evidence. I do not propose to read the evidence. I will give a few citations which go to show that, and they are by no means excessive, they could be multiplied several times. With reference to the Cuyuni river the Tribunal will find in the second volume of the Appendix to the British Case at page 58 B the statement relative to the year 1748 where an interpreter had to be used. In that year it was that the Director General of Essequibo said :

“ I have engaged a postholder for Cuyuni well acquainted with Indian language. ”

In 1762 the Director General says :

“ And that there are rich mines of those metals in that

district, and especially in Cuyuni, I believe to be as certain as my own existence, and I think that my reasons for such belief are well grounded.

I shall try to get a good honest interpreter, and having found such an one will bind him by oath. ”

Then there are a number of references to the Upper Cuyuni to be found in the second volume of the Appendix to the British Case; at page 47 opposite F; at page 48 opposite A and C; and even as late as the year 1804 in the fifth British Case Appendix, page 185 A and B. This is what was said :

“ Read a Memorial of the Protector of the Indians of Essequibo, Mr F. T. van der Lott, acquainting the Court with his having some time ago, in his capacity as Protector of the Indians above mentioned, appointed to be Postholder in the Upper River of Essequibo the free coloured man Amon Cornelis; that the difficulty of finding white people able to hold this situation, and the knowledge the said Amon Cornelis had of the Indian languages, and the confidence the Indians put in him, &c., had determined him to bestow this place on the said coloured man, requesting the Court to confirm him therein, and to grant him the fixed salary of 1,200 fr. per annum, on which terms he had appointed him provisionally in consequence of the power granted to him.

After reading this Memorial the Court reflected that, for as much has had come to their knowledge, no white persons could be found in the Upper River of Essequibo fit to hold the place of Postholder, and that the free coloured man named Amon Cornelis mentioned in the foregoing Memorial, by his local knowledge, long intercourse with the Indians, and by understanding and speaking their different languages, was perfectly qualified thereto, it was therefore resolved, after mature consideration, and without establishing a precedent for the future, in this single case to confirm the provisional nomination. ”

That is in 1804.

Then another reference in the British Counter Case Appendix at page 70 opposite E, in the year 1699 in this very Diary of Kijkoveral.

Another in the British Counter Case Appendix page 216 F referring to the year 1768.

Another in the fourth volume of the Appendix to the British Case page 13, opposite B and C; and as late as 1781 in the Fourth volume of the Appendix to the British Case at page 216 DE; and coming near home, the Pomeroon-Moruca region, where, of course, one would naturally expect the Indians would first learn something of the Dutch language, in the year 1781 there is a reference to interpreters needed there.

In the first volume of the Appendix to the British Case page 224 C, E.

In the year 1735 the British Counter Case Appendix page 180 F.

In the year 1760 in the second volume of the Appendix to the British Case at page 195 B, C; and it is significant that in that very year which was the year of the Flores expedition there is the declaration of an Arawak Indian that one of the Indians sufficiently conversant with the language was asked, and so on, showing the Indians in that year were familiar with Spanish.

In the year 1762 is another reference to the second volume of the Appendix to the British Case, page 216 F and as I say these references could be very largely multiplied, but I think I have given enough.

Before I leave the year 1699 and 1701 I want to call attention to just a few of the references in the Diary of those years to trade in those rivers. There is nothing to indicate the trade was carried on at any distant points but there are some references that show it was carried on at near points.

The President. — This is trade in general?

Mr Mallet-Prevost. — Yes, I have finished with the horse trade.

In all these years that every transaction is noted in this Diary the Cuyuni, in the two years, is mentioned nine times. Apart from the horse trade the Masseruni, if my account is correct, is mentioned ten times. I will call attention to two or three in each case to show the general character. At page 56 of the British Counter Case Appendix, for instance, opposite C :

“ Jotte, the old negro, arrived from the Upper Cuyuni, bringing with him two parcels of bread, and having come down for a canoe in which to fetch the remainder of the bread. ”

Now, as a matter of fact, the words translated “from the Upper Cuyuni” are wrong. I am not a Dutch scholar, but I think it will be clear it is “*van boven*”, *from above*, in Cuyuni, and when we remember these rivers were referred to just above their mouths, as “the Upper Cuyuni and Masseruni” (and I have made that clear) it will show what these mean. Here is a man, brought down some bread and got a canoe to fetch the rest of it; it cannot mean far up, yet that is one of the nine references in this Diary :

“ The old negresses are still engaged in crushing salt. Towards evening Sam, the old negro boy, arrived at the Fort from Cuyuni, with eighteen parcels of the bread which Jotte has purchased. ”

That is another one of the nine. And at page 57 :

“ This morning the old negro Jotte again set out for Cuyuni, to fetch the remainder of the purchased bread. ”

That is another of the nine references in two years.

Lord Russell. — Those seem to be excursions to a baker’s shop.

Mr Mallet-Prevost. — Yes; right there about the place; and yet these

are put forward as evidence of Dutch dealings with this great region, hundreds of miles from Kijkoveral. At page 155 under May 28th, opposite C :

“ In the afternoon there arrived here from Cuyuni the Company's old negroes and traders “ Handsome Claesje ” and Jan Swart, bringing with them cedar-wood planks and turtles. ”

And I will only call attention to one in the Massaruni because it enables us to fix the time as to when they were away, I think almost the only one; page 56, opposite D :

“ Jotte the old negro has set out for the Upper Massaruni with the son of the deceased Chief Owl — ”

and then on the opposite page under date September 22nd at the very top :

“ In the afternoon Jotte the old negro arrived; ”

he had been gone four days and yet he goes to the “ Upper Massaruni ”. We know how long these journeys took and it is no use making comment on that.

It takes five or six weeks and this is four days. That is the sort of evidence there is of the Dutch dealings with these rivers. There is no reference, outside of this diary and outside the references to the horse trade, to any dealings of the Essequibo Dutch with this region till the year 1724, and I will not stop to read it. It is a mention in connection with a number of expeditions in the British Case Appendix, volume VII, page 179, and there is nothing from 1724 to 1731 and in 1731 there is a brief reference to it in the second volume of the Appendix to the British Case, page 12, at the bottom of the page :

“ That by Resolution of the 2nd April, 1730, you have forbidden to private colonists the trade in the Rivers Massaruni and Cuyuni meets with our full approval. Nevertheless, we wish to be informed of what profit to the Company in particular this trade is, above and beyond that buying up of red slaves, and, moreover, whether the Company might not derive some further profit from those rivers than has hitherto been the case; and, further, what quantity of red slaves are, or can be, bought up there in one year — ”

and so on. And we have the answer of the Court of Policy at page 14 :

“ Concerning the advantages of the trade in the rivers of Massaruni and Cuyuni for the Honorable Company alone, this consists only in red slaves, and the order has been renewed because the veto was one kept up by all former Commandeurs. But most of the Indians having left those parts that trade is now of less profit, except for the oriane dye. The plantation Poelwijk lying up in the first mentioned river sometimes buys one

or two red slaves in a whole year, but they are mostly children of about eight or ten years old. ”

That is the answer the Court of Policy had to make to the Company when asked what use was being made of these rivers; none, except to get a few slaves each year. And I shall show in the evidence in the course of today and tomorrow in connection with the posts attempted to be established in the Cuyuni the main purpose of them was this slave trade.

I propose now to take up the question of these Cuyuni posts of 1755 to 1758, which was the second and the last.

Lord Russell. — The Dutch posts?

Mr Mallet-Prevost. — The Dutch posts. In connection with those posts it becomes necessary to examine into the history of the years before and into the history of subsequent years for the purpose of knowing exactly what the purpose of those posts was and what their signification was. As I understand it the British allegation as to title in connection with this region is that there was a Dutch title which was a perfect title by occupation. These posts are referred to as evidence of occupation, and there are certain so-called Dutch residences and Dutch settlements which are scattered over this region, and which are presented in the British Case and Counter Case as evidences of Dutch occupation. This whole region was, according to that theory, vested in the Dutch, because the Dutch occupied it. Then, quite apart from that, there is the theory that it was also Dutch because the Dutch exercised a political control, but it is important to point out that this appeal to a political control is not made for the purpose of perfecting a title to some region that was not covered by occupation. That is to say, there was not a piece of territory that was occupied and another piece that was controlled. The title of occupation is made to refer to the whole region, and the title of control is made to refer to the whole region of these posts and Dutch residences. And Dutch settlements, so-called, are brought forward, in the first place, to prove a Dutch occupation, not of a part but the whole; and in the second place to prove a Dutch control not of a part but of the whole region. Now there is a rule which I admitted in connection with a title by discovery, and which is certainly applicable to any title such as that which is attempted here to be set up by occupation and control, and that is that no title, whether by discovery, by occupation or by control can be larger than the intendment.

There must be an intention, on the part of the person that discovers, to occupy. If a title by occupation is to be alleged it must be shown that the person occupying had the intention to occupy; that if there was a post or a settlement at this spot, there was an intention that that actual occupation should serve as a constructive occupation of another point. If there was no such intention, then there could have been no such occupation, and precisely the same thing with regard to control. Control can be no larger than it is intended to be. If these posts can today

be appealed to, and if the acts of the Dutch can be appealed to, as showing a political control of the whole region, it must be because the Dutch when they established those posts and did those political acts had the intention thereby to exercise a control over that whole region. The title cannot be larger than the intention. It is for that reason that it is important not to begin with the year 1755 but to follow the history of this region from, we will say, 1746 when there was the first suggestion, not of the post of 1755 but of a post. To see what? If it was to lead up to the final establishment of the post in 1755, to see what views the Dutch had as to this region. What did they consider was theirs? What did they believe that they were occupying? What did they believe that the Spaniards were occupying? What did they believe they were controlling? What did they intend to control? What did they believe the Spaniards were controlling? We must have the minds of the parties to this thing — if we are to get at the significance of their acts, and especially at the significance of these passages of 1755 and later of 1766. I say if the examination of this evidence, Mr President, shows, and it will show it, that these posts were established with no thought of occupying this region, that they were established with no thought of controlling far and wide this interior basin, then it necessarily follows that neither those posts nor those alleged acts of control can today be used to prove what, to the minds of the Dutch themselves, they did not prove.

The correspondence, the records, and the evidence which I shall examine, establish certain facts. They establish *first* the fact that from 1746 to 1758 the Dutch were not only wholly ignorant as to where their boundaries on the Cuyuni were but more than that they attempted no definition of those boundaries even to themselves, and formed no plans for the occupation of any definite territory. In the *second* place, at the time that the Cuyuni post of 1755 was established and for long prior and subsequent thereto the Dutch believed the Spaniards to be in possession of a very considerable portion of the Cuyuni river. Notwithstanding that fact they formed no plans and took no steps to eject them therefrom; not only so, the letters of the Dutch Governor clearly show that as to a part of that river he believed the Spaniards to be in lawful possession. A *third* fact, the Cuyuni post of 1755 was established without any thought of dispossessing the Spaniards from their actual or supposed dwelling higher up on that same river and without any thought that either in law or in fact that post constituted a Dutch occupation of the entire Cuyuni or even of that portion of it lying east and south of the expanded Schomburgk line. This I think covers the whole question as regards the subject of occupation by these posts. I want to say a word as to their extended control in that connection. I said that the evidence to which I have referred, and which I shall read at length, warrants this statement with regard to the extent of the territorial control to be exercised by this post of 1755. First, as to the region that lay below the post, that is between the post and the Essequibo river, the post was intended to prevent runa-

way slaves from Essequibo passing out of that region. It was not intended to keep Spaniards out, the postholder being merely instructed in some cases, if any Spaniards attempted to come into the colony, to notify the Commandeur at the fort. That is as to the extent of control of the post below it; between its site and the Essequibo river. As to the region above the post it was intended to prevent the Essequibo Dutch and no others from passing into it for any purpose whatever. The Essequibo Dutch were prevented from trading or settling there. The post was not intended to include Spaniards or any other person of any nationality from coming into that region in any other direction than the Essequibo. It may be stated in general without regard to any territorial limits that the post was intended to foster the slave trade. That was the primary object ostensibly though not in reality. It was said to be to restrain the Caribs from attacking the Spaniards. It was not so, as I shall show.

The first suggestion with regard to a Cuyuni post was in connection with an application made by a Frenchman, Courthial, to cut a road through the Cuyuni woods and that reference will be found in the second volume of the Appendix to the British Case at page 44.

The President. — Which is the post?

Mr Mallet-Prevost. — 1746 was only a suggestion. I think the first suggestion was a suggestion that came to nothing. The final establishment of the post of 1755 can hardly be connected with the first suggestion of this because it was in connection with a proposed road, and proposed scheme, which scheme was never carried out. My object in referring to it is to show how from that date nine years before this post was established the Dutch regarded this region and how they regarded any post that they might establish in that region.

Lord Russell. — The suggestion of the post was earlier than 1755?

Mr Mallet-Prevost. — Yes; 1746, I said, my Lord.

Lord Russell. — I thought it was 1750.

Mr Mallet-Prevost. — No; 1746. The first suggestion of any post and that is in connection with the proposed road of Courthial, second volume of the Appendix to the British Case, page 44.

Lord Russell. — The map gives the date of 1750.

Mr Mallet-Prevost. — Oh! my Lord, do not be misled. Does your Lordship refer to this so-called Dutch settlement?

Lord Russell. — Yes.

Mr Mallet-Prevost. — That is nothing at all. There were some Dutchmen carrying on a slave trade there. There was no authority for it and it is nothing at all. Your Lordship has been misled as to this and to many other places, marked on this map wrongly. They create a totally wrong impression. Dutch settlements and Dutch residences seem to be everywhere.

Now opposite B, on page 44 :

“ On the 7th of this month one Ignatius Courthial made an application to the Court for permission to cut a road through the wood in the River Cuyuni, in order to bring mules and cows into the river overland by that road. It being possible that this may be of great profit and advantage — ”

In passing I might call attention to this expression — “ into the river. ” The Essequibo was spoken of as a river and the Cuyuni as a river and the Massaruni as a river; that designation meaning almost always the region immediately clustered about Kijkoveral;

“ in order to bring mules and cows into the river overland by that road. It being possible that this may be of great profit and advantage the permission was granted him on condition that there shall be paid to the Company 3 guilders recognition money for every mule, and 2 guilders for every horse or cow, and in order to prevent any fraud in this matter, it is my intention to place the Post which lies in Demerary (and now unnecessary there on account of the opening of the river) on this road instead, which Post, in addition to the trade which it will be able to carry on for the Honourable Company, will be amply provided for out of the recognition money. ”

Now the suggestion that is made there is entirely free from any idea of territorial rights. It was a post that was proposed to be established in case this road should be opened up and trade in horses and cattle should be established for the purpose of collecting some sort of toll. It was a revenue post without any thought of it being connected in any way with any territorial claims.

Lord Russell. — Surely a right to put up a custom house is a strong form of assertion of territorial control.

Mr Mallet-Prevost. — It is, my Lord; and if there is any suggestion which would enable us to locate the post any distance from the river it might be taken, but it is a post to prevent any frauds in connection with bringing cattle into Essequibo and the idea of establishing a post must have been in the immediate neighborhood of the outlying plantations so that there the toll might be collected. That is the reason I say it is not connected with any territorial rights. The object of the post was one purely of revenue for the colony, and of trade.

At the bottom of the same page we have this answer of the Company :

“ It remains for us to answer your last letter of the 19th March of this year; in answer thereto we say that we can approve the resolution taken by you and the Court of Policy regarding the request made by Ignatius Couthial [Courthial], and the further measures taken by you in that regard, for the prevention of all fraud in not rightly declaring the animals to be brought

from the River Cuyuni. However, in view of the fact that you think considerable advantage and profit will herefrom accrue, both to the Colony and to the treasury of the Company, we request that you cause to be kept a duly specified account of the dues that will be paid for the bringing in of each mule or horse, and that you send us an authentic copy thereof annually. ”

It was in this same year that Gravesande wrote to the Company with reference to the presence of the Spaniards in the Cuyuni river. His letter is at page 45, and is dated July 20th 1746. I will read from opposite C.

“ The inhabitant C. Finet, who has arrived from up the Cuyuni, has informed me that the report of the Caribs made to me some months ago is true, namely, that the Spaniards have established a mission up in the said river, and have built a small fort there, he himself having been there and spoken with the priest and soldiery; that they were busy in making many bricks, with the intention of founding yet another mission and fort some hours further down this river. Next year, all the Indians from that direction are flying hither and praying for protection. I take the liberty humbly to entreat your Honours, finding myself very diffident in this matter, that your Honours will be pleased to have the goodness to Honour me most speedily with your orders how I am to act herein, and your Honours may be assured that the same will be carefully executed.

I feel not the least diffidence as to dislodging them from that place and capturing those forts, but such a step being one of great consequence, I dare not take anything upon myself, especially as the proper frontier line there is unknown to me. The River Cuyuni, where the aforesaid works have been constructed — ”

referring there to the mission —

“ is the same in which your Honours’ indigo plantation lies, and where the coffee plantations are situated, and falls into the River Essequibo at the place where the old plantation, Duynenburg, used to stand on the one side, and where M. van der Cruysse dwells on the other, half a cannon shot below Fort Kykoveral ”.

And then he goes on to say :

“ Jan Stok, having returned home to Essequibo from his wanderings above in Cuyuni, has reported to me that he had heard from several Indians that Nicholas Horstman was on his way to return hither, but I can hardly believe this to be true. ”

Lord Russell. — Opposite that, my note is that the Attorney General said that statement about the building of the fort was in fact untrue.

Mr Mallet-Prevost. — I shall deal with that, my Lord. The Attorney General went further and he said the mission to which Gravesande had reference was the mission of Palmar away over here.

Sir Richard Webster. — I said the one then in fact was Palmar.

Mr Mallet-Prevost. — You did not mention that it was in fact.

Sir Richard Webster. — I simply said what I said; what I meant will appear by my statement.

Mr Mallet-Prevost. — I call attention to two things in connection with this. In the first place I want to collect the evidence to show there was at this time a Spanish Mission established, or proposed to be established, in the Cuyuni itself; and in fact his reference was not to Palmar, but to a mission in the Cuyuni. But apart from any mission that might be located I want to call the attention of the Tribunal to this : whether right or wrong Gravesande believed that the Spaniards were establishing a mission in the Cuyuni river when he wrote that letter. I might deal now with the evidence as to the location of that mission; but I think on the whole it will be clearer if I go along with the historical account and ask the Tribunal to let me pass it with this statement, viz. that a mission was in fact established or proposed to be established on the Cuyuni river itself at that time. And in the second place that Gravesande believed that there was a mission upon that river. As I pointed out, Gravesande's belief in this matter is of great importance. We are here considering the intention of the Dutch Governor with regard to occupation and control and, whether such a mission existed or not, if Gravesande believed it existed, and did nothing to oust the Spaniards from that position, and if he established posts in the belief that the Spaniards were in possession of part of the Cuyuni, it makes it impossible to assume that he intended to take constructive occupation of the very spot on which he believed the Spaniards to be, and that he intended to exercise a control over the very spot where he believed that they were actually located.

Lord Russell. — How do you read that passage below E, which says :

“ The river Cuyuni, where the aforesaid works have been constructed, ”

which you said meant the missions; and the fort in connection with it,

“ is the same in which your Honour's indigo plantation lies — ”

and so on; and he goes on to say,

“ half a cannon shot below Fort Kijkoveral. ”

He cannot have meant that.

Lord Justice Collins. — He is only identifying the river Cuyuni.

Mr Mallet-Prevost. — That is all. In writing to the Company he had to give the Company this explanation where the river Cuyuni was. It shows how ignorant they must be when he has to identify it as the river where they had their indigo plantation and where the coffee plantation and Duynenburg had been, and where Cruysse had a plantation. It

simply shows the word “ Cuyuni ” could not have conveyed much to the Company.

Lord Russell. — Is there a suggestion that this was half a cannon shot below Kijkoveral?

Mr Mallet-Prevost. — Your Lordship is referring to 45 E?

“ The same in which your Honour’s indigo plantation lies, and where the coffee plantations are situated, and falls into the River Essequibo at the place where the old plantation — ”

Lord Russell. — No.

“ The Cuyuni where the aforesaid works have been constructed is the same where — ”

Mr Mallet-Prevost. — The half cannon shot has reference there to where Van der Cruysse dwells or the indigo plantation.

Chief Justice Fuller. — Or Duynenburg.

Lord Russell. — Yes, he mentions those as locating the place of the missions.

Lord Justice Collins. — No; identifying the river.

Mr Mallet-Prevost. — Yes; he goes to this trouble to identify the river because the Company would not have known what the Cuyuni was. It is most significant; though it may be comical to my learned friend on the other side —

Sir Richard Webster. Nothing comical about it.

Mr Mallet-Prevost. — It seemed to excite your risibility.

Sir Richard Webster. — I could not help smiling at the observation.

Mr Justice Brewer. — It seems to me to refer to the place where the Cuyuni enters the Essequibo.

Mr Mallet-Prevost. — I think that likely. Of course the extract which I have read proves conclusively at that time Gravesande had no definite idea as to boundaries. He thought he had rights in some way to the Cuyuni river. He had not defined them and did not know how far they went. He admits the Spaniards were in that river and makes no protest against it. Before I pass from it I cannot help referring to the way in which Stok is referred to. It shows the sort of dealings that these Dutchmen had with this river.

“ Jan Stok having returned home to Essequibo from his wanderings — ”

that is the way they went into this region; they did not go there to reside, or to make permanent settlements —

“ from his wanderings above in Cuyuni, has reported to me — ”

and so on. I pass by the question of the actual location of that mission.

Lord Russell. — We are told that gentlemen was a surgeon prospecting for minerals.

Mr Mallet-Prevost. — I do not know upon what evidence that statement is made.

Sir Richard Webster. — I think it is Horstman.

Mr Mallet-Prevost. — Yes; I do not know if that reference is correct; if he was prospecting up there he never did anything. There is no record of anything dealing with mining and prospecting, except Hildebrandt; I think I have exhausted everything on the subject of mining.

At page 46 is a letter, No. 233, which has been read a number of times. I shall not read it. I call attention to this fact: this is a letter to the West India Company in answer to Gravesande's letter of July 20th, and it was in his letter of July 20th that he referred to the Spaniards being in the Cuyuni establishing a mission or building a fort in that river, and it would be natural in answer to that if the Company had any idea its rights were being trespassed on in that river that something should have been said. The subject of the Cuyuni is not mentioned in this letter; it is passed over in absolute silence as though the Company cared not a whit about that letter. What this letter does show is that the Company was totally ignorant as to the question of boundaries. They admit that in distinct language. At the bottom of page 46 is a letter from Gravesande in which he refers to this matter:

“ I have had the honour to inform your Honours, via Berbice River, of a mission erected with a little fort by the Spaniards up in the Cuyuni, in my opinion on Your Honours' territory.

And that I had information from a certain source that they were thinking next year of founding yet another, lower down, whereat the inhabitants are very much aggrieved, and the Carib Indians a great deal more so, since it perfectly closes the Slave Traffic in that direction from which alone that nation derive their livelihood. They have also expressed a desire to surprise the mission and level it to the ground, which I, not without much trouble, have prevented, because they belong to our jurisdiction and all their trade being carried on in the Dutch Colonies, such a step would certainly be revenged upon us by the Spaniards.

It is very perilous for this colony to have such neighbours so close by, who in time of war would be able to come and visit us overland, and especially to make fortifications in our own land is in breach of all custom. I say upon our own land, I cannot lay this down however with full certainty because the limits west of this river are unknown to me. ”

Of course it is not necessary for me to call attention to the strong language in which he disclaims any knowledge as to boundary, but I want to call attention to a phrase between E and F, a phrase made use of in connection with this actual mission.

“ Since it perfectly closes the slave traffic in that direction from which alone that nation derive their livelihood. ”

That has some bearing on the location of that mission. When I come to deal later with the actual post of 1755, which first was there and afterwards was moved down to this point (pointing it out on the map) where it was raided, I will point out that the reason that it was attacked and destroyed by the Spaniards was because in the previous year 1747 there had been an attack by the Caribs upon a mission at Avechica and that mission had been destroyed. The Caribs had murdered the priest and the inhabitants and the Indians attached to that mission, and the reason they had done so was because that mission obstructed the passage of the Caribs into the region beyond, where the slaves were caught. I will make that clear, but I mention it now so that this reference of Gravesande to the purpose of this mission may be made clear. It was a mission that was so located that it had infuriated the Caribs because it prevented the slave traffic; and we shall see a little later that that mission, and another one established in the year 1750, were destroyed. So were Curumo and Mutunambo, because they interfered with the slave trade. Hence the impossibility of supposing in fact the mission of Palmar was meant, a mission which lay altogether beyond the track that the slave raiders would take. Wherever that mission was that Gravesande referred to, it was a mission that in some way interfered with this slave trade.

Lord Russell. — Where was it?

Mr Mallet-Prevost. — It is impossible to say where. It was on the Cuyuni, and probably below this point (pointing it out on the map). I should like to deal with that when I have the notes before me if you will allow me to defer it. There were two missions in 1750, only one of which is noted there, all of which came to an end because they were destroyed by Caribs, because they interfered with the slave trade. This is most significant — he is referring to the fact that the Caribs Indians were aggrieved,

“ since it perfectly closes the slave traffic in that direction from which alone that nation derive their livelihood. ”

I say in view of that statement it is impossible that the reference could, in fact, have been to Palmar or to any mission so far away. This letter of Gravesande shows a continued and almost an increased anxiety about this fort and mission. He writes to the Company and the Company paid no attention to it. He writes again and he expresses his uncertainty as to the limits, and this will be brought out clearer. He stated the nature of the Caribs, that they depended wholly on the slave trade and the missions interfered with that slave trade. There is this further point to be gotten from the extract I have read that these Caribs were threatening to attack that Spanish mission; that Gravesande said he was doing what he could to prevent it, and not only that, but he says distinctly these Caribs are Caribs under his jurisdiction. We shall see later on whether he was

able to exercise any control over those Caribs and prevent them attacking those missions.

The President. — You said the Dutch authorities and the Governor General had no idea of the boundaries?

Mr Mallet-Prevost. — Yes.

The President. — But on the other side had the Spaniards any fixed idea about the limits of their territory?

Mr Mallet-Prevost. — They did. I shall show in connection with the attack upon the Post in 1758, the proceedings of the Court, the reference of the matter to the Captain General and the statement by the Spanish authorities that they had done what they had done because this was territory of Spain.

The President. — To the Essequibo?

Mr Mallet-Prevost. — To the Essequibo.

The President. — That whole of it?

Mr Mallet-Prevost. — The whole of it. It has been intimated, I do not recall whether in the actual printed British Case or in the statement of the Attorney General, and I say what I say subject to correction, that the action of the Spaniards in 1758 was not an action done under an assertion of territorial rights. It most certainly was, and the documents demonstrate it.

The next letter to which I desire to call attention is on page 48, opposite E and F. This was a letter of Gravesande in the following year, in March.

“ I have in my previous letter by the ship Vrindschap (copy of which herewith) had the honour circumstantially to inform your Honours — ”

then a little lower down —

as also of the mission and fort above in Cuyuni, and of the intention to build this year yet another fort there, but some miles lower, for which they now are beginning to make ready, according to the report of all those who come along that river with mules.

Besides, it has been reported to me through the burgher Captain L. Persik, on his arrival from Orinoco, and confirmed by some Spaniards, that the Spaniards there had made a journey in the south-western direction right behind us, and had there discovered the origin of the Rivers Cuyuni and Massaruni (which two are the proper origin of this River Essequibo), both flowing out of a great lake or sea which is 60 miles long and 20 miles broad, and very deep; the water azure blue, without fish therein; from seventy five to eighty hours in a straight line above Fort Kykoveral. That their intention was to establish a permanent settlement for themselves near the origin of the rivers mentioned, and to fortify it, so that we then should be hemmed in by a cordon. ”

Then lower down.

“ I take the liberty once again to direct your Honours’ earnest consideration to the above mentioned, because it will be of the utmost importance in future to this Colony, which, by the blessing of the Most High, is beginning to attain a prosperous state.

I should already long ago have removed and demolished the first fort up in Cuyuni (which even now is easy of accomplishment on my part through the Caribs), if I were but rightly conscious how far the limits of your Honours’ territory extend, both on the eastern and northern sides, as well as south and westwards, for the decision whereof not the least help is to be got in this office here. ”

I call attention to such statements of Gravesande in connection with the coast, but I cannot help repeating what I said that here is the Dutch Governor with the information at his command and he makes the statement there is not to be gotten the least help on that subject in his office.

“ I therefore earnestly request your Honours to be pleased to send hither the necessary information concerning that matter, because an error in this might lead to quite too evil consequences. ”

Certainly this shows very great anxiety about this Cuyuni mission. It is also an admission as to the extent of Spanish exploration beyond, and shows a continued ignorance as to the boundaries. As to this Spanish exploration beyond I might dismiss what I have to say about that in a few words. It will be recollected, Mr President, we are now approaching the years when the expedition was sent out from Spain, an expedition by Spain and Portugal with the intention of driving out from the coasts of Guiana the Dutch and French. There was great activity on the part of these nations, and undoubtedly the reference to the Spaniards being in the interior and going here and going there is easily explained when we take into consideration the attitude of Spain at that time to this region, and the efforts she expressly declared she was going to make to drive the Dutch and the French out from the coast.

At page 49 is another document, a letter from the West India Company in that year.

“ As to the forts already established in Cuyuni for the Spaniards, and those they might wish to establish there hereafter, we have thought it best to await the action to be taken thereon by the Assembly of Ten, of which we shall then notify you at the earliest opportunity. In the meantime, we hereby repeat what in this connection we have written to you in preceding missives, and also very earnestly recommend you herewith to aid in every possible way, and with all your might, in

the maintenance of the fishery, and to help preserve the right thereof. ”

At this time the main attention of the Company seems to have been upon the mountains and their fishery, and finally after these repeated letters from van s’Gravesande instead of at once saying : the Cuyuni is ours, and we must make a protest to Spain; or, You get the mission removed, they say; We will think about the matter and consider what is to be done, we do not know exactly what our rights are, and we had better go slowly.

It shows a very great difference as to what was believed to be Spanish missions and the extension of Spanish missions on the Cuyuni river itself.

The next letter I desire to call attention to is at page 57 at the very bottom of the page. It is a letter from the Commandeur of Essequibo, and it is in the year 1748 :

“ The Spaniards were beginning to gradually approach the Upper Cuyuni but some weeks ago a war having broken out between the Carib nation and that of the Warows, which is carried on very obstinately, it will stop their further progress, and possibly, if the Caribs obtain the upper hand, they may even be driven somewhat further off, without our having in the least degree to meddle therewith. I wish, however, that if it were possible, I might know the proper boundaries. ”

Then lower down

“ A wanderer of the name of Pinet — ”

here we have these so-called traders called by their proper names *wanderers*.

“ A wanderer named Pinet having gone up the Cuyuni to obtain hammocks by barter with the Indians was requested by me carefully to spy out the doings of the Spaniards in that region — ”

that is not the action of a sovereign, Mr President. When he does not send an agent himself, it is a wanderer, and he asks this wanderer to act as a spy going into the Spanish regions beyond his control and to find out what the Spaniards are doing —

“ a duty for which he is very well fitted because he understands the Carib language thoroughly, and is by no means destitute of intelligence. He returned here on the 13th November, four months after his departure, and has made report to me that the Spaniards had not yet undertaken the building of any forts or Missions as had been their intention lower

down, but that they cruelly ill-treated the Indians subject to us, continually taking them by surprise in their dwellings and carrying them off, with their wives and children, to send them to Florida; that he had spoken to the Chief of the Spaniards, and had placed before his eyes the unfairness of this treatment, as well as the consequences of it, but that the latter had replied that the whole of America belonged to the King of Spain, and that he should do what suited himself, without troubling about us. ”

Then further down.

“ Seeing that all my remonstrances and letters to the Spaniards are of no avail, and no redress is obtainable, I intend to tell the Chiefs of the Indians when they come to me, that I can provide no redress for them, and that they must take measures for their own security. ”

What language for a sovereign to be using to his subjects, the protector of these tribes.

“ I can provide no redress for them, and that they must take measures for their own security. Then I feel assured that in a short time no Spaniard will be visible any more above in Cuyuni. I have always, but with great difficulty, restrained them, and prevented all hostilities by fair promises; however, before we come to that, I will next month send once more a letter to the Governor of Cumaná, who is expected at that time in Orinoco, and explain this matter to him seriously, with all courtesy, as well as the consequences, which cannot but be disastrous for them, and then await his reply, in order to govern myself thereby. ”

It is to be noted in the first place that nearly a year and a half had passed since the Company referred to the matter. I read the last letter of the Company in which they said they would consider it; a year and a half was allowed to go by and absolutely nothing done; and we have this statement by the Dutch Governor. It shows a complete absence of control over the Indians themselves. They were carrying on a war among themselves without any restraint from the Dutch. The Dutch were apparently absolutely indifferent to the result of that war; they failed to protect the Indians said to have been carried off by the Spaniards. Here is the statement they were being kidnapped by the Spaniards, and yet the Dutch Governor does not do a thing to protect those alleged subjects, and then Gravesande's direction to the Indians is to take care of themselves.

The next letter is at page 63, top of the page, and this is a letter from Gravesande to the Company in 1749.

“ Having written to the Governor of Cumaná that, if he persisted in the design of founding a Mission in the River Cuyuni, I should be obliged to oppose myself thereagainst effectually, he has replied to me that such was without his knowledge (not the founding of the new (Mission), but the site), and that it should not be progressed with, as in reality nothing has been done. On the map Your Honours will find the place marked, as also the site of the one already established. For six months I have seen no Indians from that side, so that I do not accurately know how matters go on there. ”

Now in this connection I want to call attention to the map that is here referred to. Before I do that I will point out that what 'Gravesande says here as to what the Governor of Cumana wrote is something so indefinite that it seems impossible to gather any meaning from it. We do not know what Gravesande said to him, nor what the Governor himself said, but what Gravesande probably said is what Gravesande certainly believed, if he said anything. As to the location of this mission and in connection with that I want to call attention to the map which Gravesande here refers to, No. 17, of the British atlas. This is the map which was appealed to the other day by my learned friend on the other side to show the location of the Barima post. That post was discussed and the reasons for it being noted at the point at which it was. I want to call attention to this fact, that this map is sent to the Company for the very purpose of giving the Company a correct idea where the supposed Spanish Mission is located, and if this map is to be taken as accurate for any purpose it is to be taken as accurate for that purpose. I call attention to the fact that this map is drawn to scale, the scale is there shown in hours, and we know that Gravesande's hours were a little under three miles.

Sir Richard Webster. — I do not think it matters, but they were four miles. As appears in one of his letters, that 15 made 60, but it does not matter.

Lord Justice Collins. — Where is the scale?

Mr Mallet-Prevost. — Right under the compass, my Lord. And the Tribunal will see as to this Spanish mission there are two places, one is the Spanish Mission supposed by Gravesande to be actually existing there, and then lower down on the Cuyuni itself is the place where there was this supposed Spanish mission. It will be seen by the scale — if there is any difference between the Attorney General and myself as to the exact length of Gravesande's hours it makes very little difference. —

Sir Richard Webster. — I quite agree.

Mr Mallet-Prevost. — Approximately the mouth of Cuyuni to the location of this Spanish mission is about from the mouth of the Cuyuni down to the Essequibo, which is short of 50 miles.

Lord Justice Collins. — Do you see where he places the great savannah?

Mr Mallet-Prevost. — Where is that, my Lord?

Mr Justice Brewer. — To the right of that mission.

Mr Mallet-Prevost. — Yes, the map stops short of that. The stream is cut short, and I think it is a general designation there of the district without any reference to the scale whatever. The river itself is cut short, which indicates, as it does in all maps, where there is a break in the river anything beyond is certainly not to be taken as part of that — it is a general designation of that kind. That certainly cannot be taken as having the scale applied to it in any way. We have the fact this map was sent home for the purpose of showing the Company where that mission was located; that was the primary object.

The President. — I think Gravesande changed his mind afterwards.

Mr Mallet-Prevost. — Yes; but I deal now with this point and want to show that Gravesande believed (I do not say that it was so) that there was a Spanish mission within 30 or 35 miles of the mouth of the Cuyuni. There was no Spanish mission there, and I do not contend that there was, but my contention is, this map along with the letters I have been reading and others I shall read, goes to show that Gravesande believed there was a Spanish mission there. All of his letters were written in that belief. The Company got this map and believed there was a mission there, and we must interpret the acts of Gravesande and the acts of the Company in the light of that belief.

Sir Richard Webster. — Mr Justice Brewer, and Chief Justice Fuller asked that I would have the translation of those six passages, I can read them off. On the Demerara, left of the map

“ Just here is the first or furthest plantation. ”

Then between Demerara and Essequibo

“ Savannah under water in rainy season. ”

On the right of the Essequibo the same note.

“ Savannah under water in rainy season. ”

Between the Morocco and Waini

“ Itabo or swampy land over which the fishermen's boats come through inside from Orinoco in the rainy season. ”

On the extreme right of the map, just where Barima is

“ Place where formerly a trading place of the Company was situated. ”

And then in the middle of the map, on the Cuyuni

“ Place where the Spaniards had intended to found a mission. ”

They are the translations Mr Justice Brewer asked for the other day.
(Adjourned for a short time.)

Mr Mallet-Prevost. — Mr President, the point which I was making at the adjournment is one of very great importance. It is not one which is original with me at all. It is not a construction that I am putting upon this map; it is a construction that was admitted by the British Case itself, when the bearing of it was not perfectly apparent, and I call attention in that connection to page 40 of the British Case in which everything that I have said as to the belief of Storm van's Gravesande is confirmed. I read from line 8 on page 40 of the British Case :

“ In 1748 the Mission of Nuestra Señora del Monseratti del Miamo was founded near the River Miamo, a tributary of the Yuruari. This but slightly advanced the frontier of the Missions, which were still many leagues from the Cuyuni. In the belief of the Commandeur at Essequibo, however, they had practically not only reached that river, but reached it at a point very low down in its course. ”

Those are the very words of the British Case, Mr President.

“ In a map dated the 9th August, 1748, and signed by Storm van 's Gravesande, the Commandeur at this period, a Spanish Mission is shown a short distance above the mouth of a river a tributary of the Cuyuni on its left bank. There is also shown the site of an intended Mission at the mouth of the same creek. Under this impression as to the doings of the Spaniards, the Commandeur wrote to the Governor of Cumaná that if he persisted in the design of founding a Mission in the River Cuyuni, the Dutch would be obliged to oppose it effectually. The Spanish Governor seems to have replied “ that such was without his knowledge (not the founding of the new [Mission] but the site), and that it should not be progressed with, as in reality nothing had been done. ” Shortly after this Storm went home to the Netherlands on leave, and on the 22nd June, 1750, was received by the Directors of the Zeeland Chamber, on which occasion he handed them a map said to have been copied from a map drawn up by the Spaniards. ”

I shall refer to that map in a moment.

“ A manuscript map is in existence in the Rijks Archief, at the Hague, which is believed to be this map or a copy of it. Whatever its origin, this map shows Missions in the positions which had been indicated upon the map of 1748, the name of the creek being given as Meejou. It is difficult to say exactly what river is referred to by this name. At any rate, the fact remains that there were no such Missions as those represented in these maps, nor does Storm's alarm in this respect appear to have been generally shared in the colony. ”

Mr President, I am not dealing at present with the exact location of these missions. I am not contending that there was, as a matter of fact, a mission at the location indicated by Gravesande. I am arguing that Gravesande believed that there was a mission there, that the West India Company believed that there was a mission there, and in that belief did nothing. And, in my interpretation of those maps, I am confirmed by the British Case itself in the passages that I have just read.

I now call attention to map No. 20, which is the one which is referred to. It is in the British atlas. This is a map which is said by Gravesande to have been copied from a Spanish map. How accurate the copy may be, I cannot tell. It is evidently a Dutch interpretation of that Spanish map, for the lettering on it is entirely in the Dutch language. It is not a map that is drawn to scale at all, but it is a map that, for this purpose, was adopted by Storm van's Gravesande as expressing his belief as to the location of this Mission, and I want to call the attention of the Tribunal to the fact that he places this mission as the British Case correctly points out at practically the same point as the map which he had forwarded to the Company. I say that there is no scale upon this map, but will the Tribunal note this very significant fact, that that point is exceedingly near to the Blue Mountain, which is just below it. That Blue Mountain is a mountain that was known to Gravesande. This map is a copy made by the Dutch from an alleged Spanish map, but as I say it is a Dutch interpretation of that map; and how correctly that corresponds with everything, that I have said.

Mr President, there is the Blue Mountain (pointing it out on the map on the wall). On this map that place is shown just opposite that Blue Mountain, which is there and which corresponds along the scale with the point that Storm van's Gravesande states.

Lord Russell. — And also Lake Parime.

Mr Mallet-Prevost. — And also Lake Parime; but Lake Parime was something which was unknown to the Dutch, and I have already pointed out that this map was not a map to scale. But we do know, my Lord, that Gravesande knew where the Blue Mountain was, and he puts that post there. I do not care how it is related to Lake Parime, I do not care how it is related to anything else on the map; he puts that Post at a place which is just opposite the Blue Mountain; and this map therefore goes to confirm everything that the other map shows, namely that Gravesande believed that there was a Spanish mission within 40 or 50 miles of Kijkoveral, and the West India Company believed it too.

Lord Russell. — Is that line there the Blue Mountain?

Mr Mallet-Prevost. — It is called Blau Mountain, my Lord. The name is written there in Dutch.

Mr Justice Brewer. — “ Blau Berg ”.

Mr Mallet-Prevost. — Yes; it is written in Dutch. All the lettering

on it, as I have already pointed out, is in Dutch, and it is impossible to say whether it is a correct copy of the original Spanish map or not, because we have not got the original Spanish map. There it is “ Blau Berg ”. The Blue Mountain is given by name and the new Spanish mission is placed just opposite. I do not care what the facts were about that thing; if the Dutch Governor and the Dutch Company believed that the Spaniards were in possession there and did nothing, how can it be contended that they were in occupation of this whole region, up to the present extended Schomburgk line and also up to the limit of the British claim? And that is exactly what the British Case claims; that the Dutch were occupying all that region, all through that period, and that they were controlling it. And yet here we find the evidence from the records admitted by the British Case is that at that very time both the Governor and the Company believed the Spaniards were within 50 miles of Kijkoveral. And right there, Storm van's Gravesande was in doubt as to whether that point was a point that he could properly claim or not. At one place he says it is undoubtedly on the territory of the Company; and in another place he says I cannot speak about this with any certainty at all. And let it be remembered, Mr President, that when Storm van's Gravesande expresses his doubt as to the boundary, and the Company wants information as to the boundary, he expresses those doubts and they want that information, believing all the time, that the Spaniards are there, and they do not know whether they can rightfully put them out of that point. It does seem to me that that throws a flood of light upon what the Dutch believed at that time was the limit of the Dutch possessions. It is in a letter of June the 22nd 1750, at page 67, in the second volume of the Appendix to the British Case, that Gravesande refers to this last map that I have called attention to. This is at the top of the page, and is a report by Gravesande which he made, I think, while he was in Holland : —

“ Article IV. It is necessary that the limits of the Company's territory should be known, in order successfully to oppose the continual approach of the neighbouring Spaniards, who, if they are not checked, will at last shut us in on all sides — ”

how true it was that he was believing that they were there within 40 or 50 miles —

“ and who under pretext of establishing their Missions, are fortifying themselves everywhere. And, because the limits are unknown, we dare not openly oppose them as might very easily be done, by means of the Carib nation, their sworn enemies. Please study in this connection the accompanying map, drawn up by the Spaniards themselves and copied from theirs ”.

That is the map to which I have just called attention.

Then, at page 69, there is a letter from the Acting Commandeur to the Company. Storm van's Gravesande was at this time in Holland where he had gone. I think he remained there for one or two years, for one year at any rate, and it was while upon this visit to Holland that he made that statement which I have just read from page 87. While he was gone, there was an Acting Commandeur in Essequibo that took charge of affairs, and it appears that this Acting Commandeur had certain notions as to where these Missions were and he wrote to the Company correcting what he believed to be errors on the part of Storm van's Gravesande. I read from page 69 just at the top :

“ The Commandeur ” (that means Storm van's Gravesande)
“ at his departure gave me to understand that there was information that the Spaniards had begun to construct a new Mission close by here, and that it was necessary to pay attention thereto. I have carefully informed myself about it through the colonist Frederik Persik, who in person has gone thither, and has the greatest intercourse with the Spaniards. He has assured me that the last Mission which is being constructed is in a certain little river called Imataca, situated far off in Orinoco, and which (in my opinion) is directly far outside the concern of this Colony.

And concerning that which are said to have been constructed up in the River Cuyuni, I am instructed that they are very much nearer to the side of the Spanish than to our territory. I have, for reasons aforesaid, judged it to be my duty, to make a report thereof to Your Honours.

Persik aforesaid has also informed me that the Fathers above in Orinoco were inclined to open a trade with this Colony in cattle, which they (if able to obtain permission therefor), would transport overland. If permission for this be asked, and the Commandeur be still absent, I shall refuse it, until your Honours shall be pleased to frame the necessary orders thereon which I hereby request.

On the one hand, this would contribute very much to the raising and cultivation of trade, but on the other hand this would be a safe and open way (not to mention times of war) for the slaves who might come to run away from the Colony, unless a good Post were established thereon. ”

I want here to call attention, Mr President, to the fact that, in the first place, the Acting Commandeur refers to a mission up in Imataca, which was the last which was being constructed that year. But he makes a distinction between that mission and the mission in Cuyuni, for he first speaks of the mission in the Imataca and then he says this :

“ And concerning that which are said to have been con-

structed up in the River Cuyuni, I am instructed that they are very much nearer to the side of the Spanish than to our territory. ”

It is therefore impossible to tell from this exactly what the Acting Commandeur had in his mind as to that mission, except this fact that it was a mission in the river Cuyuni. But whatever his views may have been as to this, we will see from subsequent letters, which I shall read, that when Storm van's Gravesande returned to the colony he did not accept any such views as to the mission being far off in Imataca or anywhere else, and he continued in the belief that the Spaniards had missions on the river Cuyuni close to the Dutch settlements. I shall call attention to that as I come to the correspondence, in order of date. Another thing that I call attention to in connection with this letter is that we have here a second suggestion as to the establishment of a post. The first was in connection with the proposed Courthial road, a suggestion that was never carried out. Now as Storm van's Gravesande is in Europe, this Acting Commandeur says that he has had some communication with the Fathers up in the Orinoco. There is some talk of opening a trade with them, and suggests that if it were done it would be a good thing to establish a post on the road, showing that there again the thought with regard to the post, when its establishment was talked about, was a post for the purposes of revenue, a Post for the purposes of trade, not a post for the purposes of taking possession of any part of this territory and a post which was distinctly and directly connected with their slave trade and with the prevention of the running away of slaves. That fact I shall emphasize more and more when I come to deal with the post that was established five years later. It would perhaps surprise you, Mr President, when I state it as a fact, and the evidence supports me, that, after this letter in the year 1750, and although Gravesande was in Europe and laid this matter before the Company, that actually not only was nothing done but the whole subject was dropped for four years. The presence of the Spaniards in the Cuyuni disturbed the Company so little, that there is no talk of them until the year 1754.

Now I come to Storm van's Gravesande's next letter. He had got back to the colony then. This is to be found on page 93 of this same volume. I read from just opposite E. Just above that, he has been speaking about the Spaniards. If he has not mentioned Iturriaga by name, and I think he has and calls him a Major General, he speaks about the rumors of the Spanish forces, and then speaks about certain Swedish emissaries arriving at Surinam to examine Barima and so on. And then he goes on to say this :

“ I have at this moment received information that the Spaniards (apparently in order to facilitate their undertaking) have established two Missions up in Cuyuni, and garrisoned them with men. Your honours will certainly recollect that I had the

honour some years ago to inform your Honours that they had located a Mission in the Creek Mejou ” —

the word Mejou appears in the second map, map No. 20 in the British atlas, which I said was not drawn to scale, and it corresponds to the other one which in the first map is not named, —

“ which flows into the Cuyuni, whereupon your Honours did me the honour to command that I must try to hinder it, but without appearing therein. ”

Those are the orders that the Dutch Governor received from his Company at that time.

“ I did not agree in the reasons which have actuated your Honours to command this secretly, because this Mission was so absolutely and indisputably on our territory ” —

of course only 40 or 50 miles away —

“ yet when I was honoured with your command I had already done myself the honour of writing to the Governor of Cumana to make my complaint, with a request that he would cause the Mission to be moved away from thence, adding also that I should otherwise be compelled, however unwillingly, to use means which would certainly be disagreeable to them. This had the desired effect, because I received a very polite reply, and the Mission was not only actually moved back, but even one of ther ecclesiastics was sent here with the assurance that this had been done unwittingly. ”

I can imagine the surprise of these Spanish Fathers when they received information from Storm van's Gravesande that they had a mission down at the lowest falls of the Cuyuni. Of course they said : “ we are not *there*; we have no Mission *there*; we are not establishing a Mission within a few miles of your place on Kijkoveral. ”

Then the letter goes on :

“ Having attained my object, I accepted this as sterling coin. But the present is quite another affair. These two Missions are not in the Creek Mejou, but some miles lower on the River Cuyuni itself. ”

The Tribunal will remember in both maps, particularly in the first one, which was more detailed and to scale, he located the mission not only of the Cuyuni but on a creek which flowed into the Cuyuni, and that was the Mission that had been established. Then he showed a location on the river Cuyuni which he said was the location where they proposed to establish a mission, but had not. And now referring to the mission

which he believed had been actually established on this creek, he says :

“ These two Missions are not in the Creek Mejou, but some miles lower on the River Cuyuni itself. This taken in conjunction with the other reports, makes the matter very serious, and a very weighty one ; and I shall with much impatience await your Honours' orders. ”

Well, I can very well understand that Storm van's Gravesande regarded that as very serious. And it was very serious, if he believed that there were two Spanish missions which were being located nearer than the one that he had believed was in existence the year before. And right here we have the evidence of what I stated a moment ago, namely, that Storm van's Gravesande did not accept the statement of the Acting Commandeur made while he was away, that the last mission which had been located was up by the Orinoco in Imataca. He adheres here distinctly to what he before said, showing that he had good reason for doing so. And he refers again to that former mission, reiterates what he had said years before, that the Spanish Mission had been on this creek, and now he says that there are two Missions still further down. Apart from everything else, as General Harrison very properly points out to me, it shows one thing very clearly, and that is that Storm van's Gravesande must have had during those years very little intercourse with that region. And if after 4 or 5 years had passed, he still believed that a mission had been located within 40 or 50 miles of Kijkoveral, how that shows the man's ignorance of this whole region!

At page 96 is another letter in the same year also from Storm van's Gravesande to the Company, just below letter B, on that page :

“ All the Caribs have also been warned to keep themselves ready and armed, but I find this warning in no instance was necessary, since I have learned from one of their Headmen, who came to me last week, that the nation is furious with the Spaniards because they have located a Mission in Cuyuni between them and the nation of the Panacays, and hereby try to hinder their communication with that nation, and entirely to prevent their whole Slave Trade on that side; already, too, they have impressed and taken away some.

Wherefor they have made an alliance with the Panacays aforesaid, who were as malcontent as themselves, and both together surprised that Mission, massacred the priest and ten or twelve Spaniards, and have demolished the buildings; after which they have sent knotted cords to all persons of their nation (as is their custom), for a general summons to both together to deliberate on what further remains for them to do.

On the 23rd of this month I received this information from Mr C. Boter, who thereupon told me the common rumour was that one of our colonists had been near by there, and upon further inquiry, having found that that person had been about

the same time up the Cuyuni, I caused him to be apprehended and brought to the fort. Because such a matter would be of consequence, and would afford the Spaniards real and well-founded reasons for complaint, I have always taken punctilious care therefor.

However, this sad accident for the Spaniards has covered us on that side, so that we have nothing to fear from that direction; on the contrary, if luck will have it that we are to be attacked, these nations will make plenty of play on their side for the Spaniards."

Mr President, this is one of the extracts upon which I depend to show the existence of a mission at that time upon the Cuyuni itself, and the reference here is to two missions. It may be that there were two, and it may be that those two should have been noted upon the map. I have noted one of them, and I have marked it as a mission about the Curumu. I do not mean to say that there is evidence that it was at that particular point. If it was not there, it was probably lower down. It was a mission upon the Cuyuni. It was a mission the rumors of which not only came to Storm van's Gravesande so that he reported it to the Company, but it was a mission that had an effect, as I pointed out before, upon the slave traffic. It was a mission that was located on the Cuyuni in the route of these Caribs and because it interfered with that slave traffic they took it and they massacred the priest and they massacred the others who were there and the mission came to an end. I suppose that I will be met in this matter in this way, in the way in which I have been met with regard to those other missions of Wenamu, Queribura and Mawakken, that there is no record of them in the Spanish records.

Without going very deeply into that matter, Mr President, I want to say just a word upon that point. I have referred more than once to the custom that prevailed among these Spanish priests. They went out into the surrounding country in what were called *Entradas*. They gathered in the Indians from the forests, they brought them nearer home. They formed missions with them. That fact alone would be quite sufficient to explain, oftentimes, these rumors that came to Gravesande, that the Spaniards were out in these regions, at times going as far as Queribura, at times as far as Mawakken, and going in such a way as to lay a true foundation for this belief of Storm van's Gravesande that in the year 1750 they had missions lower down. They were not missions in the sense in which the Spanish Capuchin missions are to be taken, that is to say, founded missions, mission villages, organized and recognized as established affairs by the Government, but they were places that were established from time to time by these Spanish fathers for the purpose of gathering these Indians from the forests and of bringing them in, and that was the use that the Spaniards were making of these missions, to gather those savages in and to civilize them, and to bring them in and make them lead a civilized life.

There is another point in this connection which I desire to call attention to.

Mr Justice Brewer. — In other words, these things were just temporary movements there, which perhaps did not culminate in anything.

Mr Mallet-Prevost. — Some of them were temporary. Some were unintentionally temporary, as for instance this. I do not know that it was unintentionally temporary at Queribura and Mawakken, but let me take this as an example. The Spanish fathers went there and remained there a month or remained there a year for the purpose of gathering in the Indians. They brought them in sometimes by persuasion and sometimes by force. But apart from this, Mr Justice Brewer, there were Missions that were intended to be permanent, that were begun, and that were afterwards destroyed by the Caribs who attacked them and they therefore came to an end, not because the Spanish wished them to come to an end but because they were destroyed by these savages, and that was undoubtedly the case about the mission that I have referred to and that I have located at the mouth of the Curumu. I do not know that I ought to use the word undoubtedly, there must be some doubt about the matter, but it does seem to me and I want to be honest with this Tribunal, that that evidence points to the determination of the Spaniards at that time to establish missions about the Cuyuni river itself. They did so at Curumu in the post above. They did so at Mutanambo. Both of those were founded missions, they were destroyed by the revolt of the Caribs. They were Carib missions.

Lord Russell. — It could not have lasted a couple of years.

Mr Mallet-Prevost. — No; it lasted a short time; but it was destroyed not by the Dutch, but by the Caribs.

Lord Russell. — And as to Wenamu, how long do you say that lasted? Perhaps you are going to say something about that place.

Mr Mallet-Prevost. — As to Wenamu, my Lord, I will refer later to the evidence that we have with regard to it. They were merely temporary establishments.

Lord Russell. — Was there anything, so far as you can say, that has the character of a permanent mission further east or south than Tumeremo?

Mr Mallet-Prevost. — Well, I think that these are permanent in the sense that the intention was that they should be permanent, and they were established and lasted for some years. They were eventually destroyed and destroyed by the Caribs.

Lord Russell. — Were there any that lasted for a considerable time?

Mr Mallet-Prevost. — Cura. There were a number there, and then of course finally there was the Spanish Fort which I shall refer to later but which was quite distinct from the Missions. But there were through all these years efforts of the Spaniards to establish on the Cuyuni, missions where they made those efforts; and when they came to an end, they came to an end because these missions interfered with the Carib slave traffic. In other words, they did not come to an end because the

Dutch were there; they came to an end because in their efforts to civilize those savages and to reclaim that territory they found that for the moment they were not strong enough. Finally they were, and they drove the Caribs out of that river, such of them at least as they could not settle in the missions themselves, and I shall point to the evidence of that fact; but of course this was a work of time. The reference in the passage that I have just read to the effect that this was having on the Slave Traffic shows that it must have some reference to some strategical point in the Cuyuni —

“ because they have located a mission in Cuyuni between them and the Nation of the Panacays and hereby try to hinder their communication with that nation, and entirely to prevent their whole Slave Trade on that side. ”

And then there is this which is a very suggestive passage, opposite E :

“ On the 23rd of this month I received this information from Mr C. Boter, who thereupon told me the common rumour was that one of our colonists had been near by there, and upon further inquiry having found that that person had been about the same time up the Cuyuni, I caused him to be apprehended and brought to the fort. Because such a matter would be of consequence, and would afford the Spaniards real and well — founded reasons for complaint. ”

Why, Mr President, that is not the language of a Governor who was exercising control over there. And when rumors came to him that some Dutchmen went up there, what did he do? He arrested him, and why? Because he was afraid that the Dutchman going up there would bring him into collision with the Spaniards. I say that that is not the language of a man who is occupying and exercising control over that region. And then how does he refer to that?

Lord Russell. — Does not that mean that he desired to relieve the Dutch from any imputation that any of the Dutch had anything to do with the massacre at the Mission?

Mr Mallet-Prevost. — Well, I think very likely it does. In that same connection, it shows how afraid he was of the Spaniards. Here are these Caribs, that, we are told, were under Dutch control, and they attacked that mission and destroyed it; and Storm van 's Gravesande is so scared that, when he finds a Dutchman has been there, he puts him in prison. He is trying to disown what those savages have done. What those Caribs do is to be visited upon themselves; but, of course, if they do anything for the Dutch, he takes the advantage of that, and then they become Dutch subjects, and then they become proper instruments through whom to found a title to this region. Mr President, you cannot play fast and loose in this business. Either they were Dutch subjects, or they were not : if they were Dutch subjects, they must be treated as Dutch subjects for all purposes.

There is another letter, at page 100, to which I desire to call attention. It is opposite to letter E.

“ The spies sent by me, both to the Orinoco and to the Cuyuni, have not yet come back, but the Indians above in Cuyuni have only this week caused me to be assured that they will well guard the passage, and that I had nothing to fear from that side. ”

He was willing enough to take the assistance of these Caribs when they could help him. Of course, when they did something, they then were not Dutch subjects. But will the Tribunal notice how he refers here to persons that he sends up that river as “ Spies ” going into an enemy’s territory? I referred to a passage this morning in which that same word was used, and I refer to another passage in which the word is used again. It throws a light upon the way in which Gravesande regarded this region.

There is another letter on page 102, and this is from the West India Company to Storm van’s Gravesande. I read from the top of the page : —

“ We would we were able to give you an exact and precise definition of the real limits of the river of Essequibo — ”

and, once more, just let me say, Mr President, that the Company was writing this in the belief that the Spaniards were less than 50 miles away —

“ We would we were able to give you an exact and precise definition of the real limits of the river of Essequibo, such as you have several times asked of us ; but we greatly doubt whether any precise and accurate definition can anywhere be found, save and except the general limits of the Company’s territories stated in the preambles of the respective Charters granted to the West India Company at various times by the States General, and except the description thereof which is found in the respective Memorials drawn up, printed, and published when the well known differences arose concerning the exclusive navigation of the inhabitants of Zeeland to those parts, wherein it is defined as follows : “ That region lying between those two well known great rivers, namely, on the one side, that far stretching and wide spreading river, the Amazon, and on the other side, the great and mightily flowing river, the Orinoco, occupying an intermediate space of ten degrees of north latitude from the Equator together with the islands adjacent thereto. ” For neither in the Treaty of Münster, concerning which you gave us your own opinions, nor in any other is there to our knowledge anything to be found about this ; the only thing we have discovered up to this time by our search is a definite boundary line made in the West Indies between New Netherland and New England in the year 1650, but nothing more or further.

For which aforesaid reasons it is therefore our opinion that one ought to proceed with all circumspection in defining the Company's territory, and in disputing about its jurisdiction, in case this may have led to the aforesaid preparations of the Spaniards, and that it would be best in all befitting and amicable ways to guard against all estrangements and hostile acts arising therefrom. "

That is the language of this Company when they believed that the Spaniards were at their threshold. That is the answer, Mr President, of the Company in answer to the repeated requests of the Director General for information as to where this boundary was, requests that were always coupled with the statement that the Spaniards were right above near the Company's settlements in Essequibo. It is to be supposed that they had done what they said they would do, viz : referred it to their various chambers, studied the question, investigated it and after all that, this is the answer sent to Gravesande by the Company itself.

I call the attention of the Tribunal to a letter of Gravesande at page 119, the second paragraph just below A :

" The fear of an invasion by the Spaniards is, as I have already had the honour to advise yours Honours, mostly passed away, and there is now a peaceful lull on that account. "

This letter is the first reference that is contained in the records to the post actually established in the year 1755, and it is to be noted at the start that that post was established after the fear of Spanish invasion had passed. So long as there was any fear of that they were very careful to keep out of the Cuyuni. When that fear had passed then they went up and established the post :

" The fear of an invasion by the Spaniards is, as I have already had the honour to advise your Honours, mostly passed away, and there is now a peaceful lull on that account.

Reasons to the very slightest extent are not afforded to the Spaniards to enable them to show the least appearance of discontentment; of that I have always taken the most scrupulous care, and have done everything that was in my power to maintain good friendship and neighbourliness; but then, on the other hand, I have always been very attentive to permit no encroachment on your Honours' territory or jurisdiction, because in such cases, if the least forbearance be shown, it can sometimes result in very evil and irreparable consequences. "

That again shows what the condition of Gravesande's mind was, that he could make such a suggestion as that in view of the fact that for years he could locate the Spaniards within fifty miles of Kijkoveral, and to say that he has been very careful they should not encroach. Then opposite E :

“ All this notwithstanding, they will try to creep in softly, and, as far as possible, to approach and surround us ; and it is certain, that they have now taken complete possession of the Creek Iruwary, which flows into the Cuyuni, which indisputably is your Honours' territory. The Post located by order of the Council above in Cuyuni is situated not more than ten or twelve hours from the Spanish dwellings. ”

There are several remarks I want to make upon this passage. In the first place, let me show where this post was actually located, because we now come to the post itself and about its location our friends on the other side and ourselves are agreed. It was at Tokoropati, an island in that river. And Gravesande there says, in the first place that, the Spanish dwellings are ten or twelve hours above that post. We know what that means ; ten or twelve hours is thirty to forty miles.

Lord Justice Collins. — He puts them on the Yuruari.

Mr Mallet-Prevost. — I am going to mention that. He gives a distance, and it is a distance which in no way corresponds with the distance from this post to the Yuruari. If we are to be guided in any way by distance it would be a short distance above this some forty or fifty miles.

Now his reference to the Yuruari is not a fact which establishes control, in view of the distance he gives, and though the river which we now know by the name of Yuruari is the river which naturally suggested itself to your Lordship as the one which he had reference to, it is not necessarily so. It is the river whose name most nearly approaches, and if we had nothing else than that I should say that the testimony pointed to the fact that the Yuruari was in fact meant but there is a river which is not very far distant which I do not find upon this map, which had a similarity.

Sir Richard Webster. — Do you mean the Apongawari, near Wenamu?

Mr Mallet-Prevost. — No ; but be that as it may we have the fact that the Yuruari according to the correct distance is *here*, approximately 120 miles above this post, or undoubtedly more along the river, nearly 200 miles ; and the mission which was located in that year, as a matter of fact, upon the Yuruari was still further away. It shows one of two things : either great ignorance on the part of Gravesande as to the geography of this region or he had reference to some other location on the river itself. And when he gives here the measure, in his own language, of it being ten or twelve hours above that post it rebuts the inference which would be naturally drawn from the use of the name Yuruari in that connection. Here again, whatever the fact may be, let me point to this which I have been insisting upon, that we are dealing here with Gravesande's belief and that whatever may have been the fact as to the establishment of any mission, he believed, when he established the post at Tokoropati, he was within a

few miles of the Spanish dwellings. When he went up this river as far as Tokoropati he found out his former notions must have been erroneous but he still believes they were on the Cuyuni river itself a few miles above the Tokoropati post.

Lord Russell. — Ten or twelve hours?

Mr Mallet-Prevost. — Yes; and the hour I took is a little under three miles. I understand Sir Richard Webster says it is four. I do not care which. It was a short distance off. That was what Gravesande's belief was and when he established that post it was impossible to suggest it was his intention that that post should constructively act as Dutch occupation up to the present limits of the British claim. It is to be noted in this connection that he speaks of their creeping in softly and approaching us as though that were not near enough to have them.

Lord Russell. — It is curious at the same time (this is about 1755) at that very date to read the account from the other standpoint of Iturriaga.

Mr Mallet-Prevost. — I am going to deal with all that Spanish evidence, my Lord.

Lord Russell. — I merely call your attention to the comment. He does not bring any of these missions so close.

Mr Mallet-Prevost. — I have said that I do not contend that there was a mission there. There was not a mission here where Gravesande locates it. That would bring us, we will say, to about that point (pointing on the map) and there was not any mission there and I am not contending that there was.

Lord Russell. — Do you think he was inventing this to stir up the authorities?

Mr Mallet-Prevost. — No; I think he was an honest man.

Lord Russell. — Honest, but rather funky.

Mr Mallet-Prevost. — It may be he was honest, and if my learned friend attempts to discredit him he then discredits one of their best witnesses.

Sir Richard Webster. — Nobody has attempted to.

Mr Mallet-Prevost. — My learned friend said that he was getting to be an old man and so on, but Gravesande from beginning to end shows that he had at heart the growth of this colony and tried to deal honestly. He was a man living in hard times where men were cruel and the slave traffic was a traffic that was engaged in, and though he had to countenance and help it he was a man that did his best under the circumstances and was a man speaking honestly and not deceiving his Company, and an intelligent man who made these reports honestly and was not lying about it. He was not a liar.

Lord Justice Collins. — It is agreed that Tokoropati is the site of the post there referred to.

Mr Mallet-Prevost. — The first site; not the site where the attack occurred. That is quite agreed. There was a great difference of opinion among us at first.

Lord Justice Collins. — It is not the site on the map.

Mr Mallet-Prevost. — At the time the statement was made the first site of the post was away up by the Acarabisi.

Sir Richard Webster. — We had not the further documents then that we have now; they were discovered afterwards.

Mr Mallet-Prevost. — There is no question; we both agree about it.

Lord Justice Collins. — It is 1766 in the British map now.

Mr Mallet-Prevost. — Yes; it ought to be 1755. These marks were made before the evidence the Attorney General referred to came to light, and I want to make this clear because possibly there is some ground for misapprehension.

Lord Russell. — The original site on this map was M 10, Tokoropati?

Mr Mallet-Prevost. — Yes; the correct position is marked on the map on the wall. There are a few things we can agree upon and that is one of them.

From this time, in the year 1755, till the destruction of the post in 1758 three years later, there is not the slightest suggestion of any knowledge on the part of the Dutch as to their boundary; the same profound ignorance that there had been before continued. There is no evidence that Gravesande changed his views, or that he formed any plans for taking possession of any part of the Cuyuni above that post. I say during this time there is no evidence whatever that he changed his views as to the whereabouts of the Spaniards in that region — no evidence that anything was done for the purpose of pushing the Dutch possession or ousting the Spaniards; and on the contrary there are two things which very clearly prove that he had no intention either of disturbing the Spaniards or himself moving further up. I shall refer to those. In the first place, that he did not intend to disturb the Spaniards will be shown by the instructions given to the postholder, at page 168 of this same volume. I refer to Article II :

“ That the Chief of the said post will be very careful not to cause any injury to be done to the Spaniards who are our good friends and in all he will maintain good friendship and correspondence with them. But at the same time he will be most careful about the said Spaniards, and if by chance they are desirous of passing to the river Cuyuni or into any territories of our colony and cause any inconveniences the Chief of the said coast or guard shall thereupon dispatch a man to the Governor's Castle to advise him thereof. ”

“ To the river Cuyuni, ”

of course, means to below, where the colony was, because he recognized the Spaniards were only a few miles above on that river. It shows again the use of the words “ River Cuyuni ” and what those meant. And

the Postholder was put there, not to interfere in any way with the Spaniards, but in case the Spaniards came down; (even then he was not to interfere with them) but if they came down and wanted to go to the colony he was to send the man to the Governor to apprise him and let him know of the coming of the Spaniards.

At page 168, at the top of the page opposite A, is an answer which one of the witnesses who was subsequently arrested (and I will refer to what happened) made as to the purpose of this Post, in the eleventh paragraph :

“ Asked if the lands about there were adapted for cultivation, he answered that they were not, as they were subject to inundations; but higher up than the Post there were good patches but that his Governor does not allow them to be occupied nor any one to be suffered therein. ”

In that connection let me call attention to a very important fact so that the full scope of that testimony may be understood. Tokoropati was the first site of this post and it was there for probably three years. That is not the place where the attack took place; when the Spaniards attacked the post they (the Dutch) had abandoned it and were preparing the site for a post lower down. As to the second site of that post our learned friends on the other side and ourselves are not agreed.

We are both agreed that the second site was below the first site and *we* have located the second site at this spot at the mouth of a creek called Quive Kuru. I shall show the reasons for that presently, and that when the witness is speaking, he is speaking about lands above the second site not about lands above the first site.

Lord Russell. — I do not quite understand. You say the original site at Tokoropati was not the place of the attack.

Mr Mallet-Prevost. — No; before the attack the Dutch had abandoned it.

Lord Russell. — It was an attack upon the new post?

Mr Mallet-Prevost. — Yes.

Lord Russell. — Is that agreed?

Mr Mallet-Prevost. — Yes; we are not agreed as to the location of the second site, but we are agreed that the attack was upon the second site.

Sir Richard Webster. — Yes; they moved it for health and said why they did it. I mentioned that.

Mr Mallet-Prevost. — I wanted that the evidence of this man might be thoroughly understood; at page 168 :

“ Asked if the lands about there — ”

that is above the second site of that Post —

“ were adapted for cultivation, he answered that they were not, as they were subject to inundations; but higher up than the

Post there were good patches but that his Governor does not allow them to be occupied nor any one to be suffered therein. ”

I call attention to that prohibition of the Dutch Governor against anyone going up there, exactly as I called attention to the prohibition on the coast. This has a distinct meaning here; the only authority that could permit settlements or authorize settlements in that region had distinctly forbidden settlements in that region and hence if any individual Dutchman went up there and engaged in the slave trade or if they settled there (there is no evidence that they did) but even if they had it would have been in direct violation of the Dutch Governor's prohibition and hence not a settlement that can be alleged as a basis of title today.

The full evidence of the location of these two sites is given in the British Counter Case Appendix at pages 202 and 203. I will pass that by as I shall have to refer to it later on when I speak of the account of the attack. At page 144 of volume II there is a further letter of Gravesande which gives his account of the Spanish attack in that year. I read just above C :

“ They have had their eye on the river for some time and I have always had to defend it most vigorously. All these attempts of theirs furnish convincing proof that the stream must be of much greater importance than we are aware of. It is my opinion that this river is of the greatest importance to your Lordships, much more so than any one of the others, and also that it is perfectly certain and indisputable that they have not the slightest claim to it. If your Lordships will be pleased to look at the map of this country drawn by Mr d'Anville with the utmost care your Lordships will clearly see that this is so. Our boundaries too are defined in a way which proves that the compiler was very well informed. ”

I point once more in connection with this interior to the fact that the first time that Gravesande tried to enunciate or to declare a line it was the d'Anville line. Before that time he had been in the dark and the Company had been in the dark. There had been correspondence between the two. Gravesande had begged the Company to give him some information and the Company had written back to see if there was some information in the records of the colony. Neither knew anything. The attack came upon the colony in 1758 and after that we have Gravesande referring to this map of d'Anville as his line and that he took. I will deal with what that means by and by. I want to deal now with the attack and purpose of the attack as viewed from the Spanish side. Right opposite this page, beginning at page 145, is one of the most important letters that we have in this case, and as its phraseology at the start is apt to be a little misleading, owing to the confounding of several personalities here, I want to say a word, as to what the letter was, before I read it.

The letter is written by the Prefect of the Missions Benito de la Garriga and it is addressed to Don Felix Ferreras. Don Felix Ferreras was only the acting Commandant of Guiana and this letter was written in answer to a request from Ferreras for information as to the Dutch in the Cuyuni.

As I stated this morning, the year before, that is in 1757, Don Juan Valdes was the Commandeur at Santo Thomé. He was absent in the year 1758 and an Indian captain engaged in establishing the village of Avechica, which I pointed out this morning as at *this* point (pointing on the map) had been murdered by the Caribs. Valdes who was at that time Commandeur had, at Benito's request, sent Ferreras, the man to whom this letter was addressed, to inquire into the matter. Ferreras had gone and had found that the murder had been committed by the Caribs who revolted in 1750, in Tupuquen, and who did not want to have Avechica founded as it would prevent their secret passage to the Usupama, which is a river beyond, one of the sources from which they got their slaves. Avechica was on the way to Usupama and the Caribs murdered the Indian Chief who wanted to found that village because it stood in their way and these revolted Caribs were reported to Ferreras as living on the Cuyuni at the mouth of the Curumo which is the basis of the statement "That there was a Dutch settlement there." Benito proceeds to answer this and from hearsay information says that the Caribs and Dutch were still at the mouth of the Curumo and he adds that they lived at the mouth of the Curumo.

Lord Russell. — The words are "are still living." I think it would be more convenient if you read it right away.

Mr Mallet-Prevost. — I thought that a few words of explanation might make it clearer, my Lord. I know that after I first read it that I had to read it several times to be quite clear what was meant and I thought these introductory remarks might be of some assistance; but I will read the letter at once :

" The Caribs of the forest having murdered the Captain of the Indians of the Guaica nation, with his comrade, who were engaged in establishing with their people a village, with good beginnings and hopes of very great fruit, at a place called Avechica, on the banks of the River Supama, that village is now completely lost. For on account of that murder the said Guai-cas have returned again to the forest. There are also Indians of that nation in the missions near the Yuruary, and they frequently demand to be allowed to go to revenge the murder of their people. But the priest of the said mission, with his accustomed prudenece, informed me of these events, and that by his counsels he detained them. And fearing a worse misfortune, and with the object of obviating it, I requested the Commandant, Don Juan Valdes, that he would be pleased to instruct you, in order that you — "

that is this Ferreras, now Acting Commandant —

“ who are so experienced and intelligent, and have sufficient knowledge of the Indians, might be furnished with the necessary orders and proceed to the interior for the purpose of investigating and ascertaining the motive of those murders, and if possible, even obtain the names of the aggressors.

You carried out the orders of the Commandant by proceeding to the interior and making the necessary inquiry and you investigated the affair. The account you were good enough to give me of your journey was as follows : that having been as far as the Missions of Miamo, Carapo and Yuruary about the middle of May of the past year, you had well informed yourself that his wife had been seized — ”

that refers to the wife of the Indian —

“ and taken to Essequibo to be sold that ; the murderers were some Caribs, who in the year [17]50 had rebelled in the settlement of Tupuquen, commanded by the Indian Caiarivare, the Alcalde of the said settlement of Tupuquen, one of the principal instigators of the rebellion; and that the said aggressors were living in the interior on the River Cuyuni and at the very mouth of the River Corumo, which flows into the said river; that they were living with some Dutchmen from the colony of Essequibo, engaged in slave traffic for the said colony —

I will show that every one of these references to Dutchmen living in that interior show they were Dutchmen engaged in the slave trade. —

“ and that the principal reason for their murdering the said Captain was because he was founding a settlement in the neighbourhood of Avechica, and thereby was closing the pass of the River Usupama, and hindering them from passing without being discovered ;

showing this slave trade by the Dutch and Caribs was a secret and surreptitious slave trade and was a slave trade carried on in this case as far as the Usupama and I will show many others where it was distinctly Spanish territory —

“ and you have now learned, by word of mouth and by letters from the religious, that the said Dutch, with these very same Caribs, are still living at the mouth of the River Corumo, buying Indian slaves.

Now in a letter of the 30th May last, you are pleased to request me to furnish you with an exact account as to whether the Dutch are still living in the above mentioned place,

or in any other places near it; if they maintain constant traffic in clothes, hatchets, &c; and in what state of defence they are, and whether they have any artillery, and of what calibre the cannon are, so that, being now in charge as Provisional Commandant, you may be able to report upon these matters to the superior government whenever occasion may demand."

Showing an interest at once by the Spanish authorities in what was going on in these rivers as soon as they knew of this murder.

"And, in reply, I answer what is known to all the religious of our Missions, but particularly to the Fathers President of Miamo, Carapo, and Yuruary on account of their immediate proximity to the frontiers."

Lord Russell. — What frontiers are those?

Mr Mallet-Prevost. — The actually settled frontiers, not political frontiers. That is negated by everything that goes after. It cannot be suggested this is the limits of the frontiers with the Dutch; everything that goes after this contradicts it, it is the actual frontiers:

"The Caribs of Miamo have very often told the Father that he ought to allow them to go and seize or kill the Dutch at the mouth of the Corumo, who had a large quantity of articles for the purchase of slaves. The Barinagotos of the Yuruary say the same; and these have frequently mentioned that the Dutch have threatened to burn their mission, because they obstructed the pass of the Yuruary;"

showing these traders often attacked the missions themselves:

The Caribs of the Carapo informed the Father that the negro who is in the Cuyuni was going to the said mission, but was afraid, and returned.

"The Caribs have given sufficient information that three white Dutchmen and ten negroes, with a large number of Caribs, are building houses and clearing the forest for the forming of a settlement in the Cuyuni."

That refers to this post;

"They are unable to say, however, whether they have any cannon; but they do affirm that they have very large blunderbusses, and a great quantity of muskets; and that, at the same time, they have numbers of Aruaca Indians from Essequibo with them. They also stated that the Caribs are deserting them, because they compel them to fell large forest trees with great labour. Of this, however, we have no other news than what the Indians tell us; but some have told it to me

personally, and others have given the same information to the other Fathers.

It is by no means incredible that the Dutch are in the Cuyuni buying slaves, for they do not hesitate to carry on that illicit traffic nearer the missions, and, as you well know, Captain Bonalde encountered a Dutchman, about a day's journey from the mission of Miamo, buying slaves or Indians which the Caribs were selling him; and although he did not actually find him in the house of the Caribs, nevertheless, three Indian slaves, some cutlasses, and some glass beads were found in his "rancho", and were distributed among the Indians of Miamo."

Showing the slave trade was carried on from the Spanish missions and on Spanish territory :

" Apart from this we know well how frequently the Dutch go to the Paragua, the Caura and the head waters of the Caroni. "

May I point out where these rivers are. There (pointing on the map) is the Paragua and that is where the Dutch went for their slaves. If this slave traffic of the Dutch is to give them anything it gives them the region away beyond the Orinoco.

Sir Richard Webster. — Beyond the Caroni?

Mr Mallet-Prevost. — Beyond the Caroni, for there they went and they even went beyond the Orinoco as we know later :

" Apart from this we know well how frequently the Dutch go to the Paragua, Caura and head-waters of the Caroni, so that they maintain their position there every year.

Although it should not be necessary to specify these things as you yourself are well aware of them on account of the number of years during which you lived in the missions and the frequent journeys you have made to the interior, still I say that, in view of the multitude of young Indians which the Caribs with the Dutch daily carry to the foreign colonies and taking into consideration that it is more on account of slaves than for any other object that every Carib is maintained in the interior with hardware, clothes, knives, glass-beads, looking-glasses, fire-arms and many other articles in use among them, it will not be too much to say that the Caribs sell yearly more than 300 children, leaving murdered in their houses more than 400 adults for the Dutch do not like to buy the latter because they well know that, being grown up, they will escape. "

Mr President, when I point out as I do that the presence of these slave raiders in this slave region is the only presence of Dutchmen which can be pointed to for the purpose of occupation and that the presence

of these Dutch slave raiders in this region is actually alleged as being the basis of Dutch occupation it will show to what extremity our friends are driven. This is the basis which they allege for a Dutch title, the murder of these 400 adults annually and the selling of these 300 children, and that in Spanish territory :

“ Indeed, we know this, as some fugitives were seen in the missions, and could be recognized by the brands of their masters which many of them have on their bodies — for the Essequibo Company have ordered that the Indian slaves shall be branded on pain of losing them.

I am unable to name all the nations which the Caribs pursue with the object of enslaving them. But the tribes dwelling on our frontiers, and the most generally known, are the Barinagotos, Maos, Macos, Amarucotos, Camaracotos, and Añaos, Paravinas, Guaicas, &c. The Dutch and Caribs, in order to go to those nation — ”

I want to show the extent of these raids —

“ ascend the river Essequibo navigating it for twenty leagues up stream to a point where they have a post; then, on account of a great waterfall they are obliged to drag the boat overland, and afterwards continue their navigation, communicating, if they wish, with the Rio Negro in the following manner : Ascending the River Essequibo and turning on the right up the River Aripamuri some lagoons are met with after navigating the Aripamuri as far as possible, and surmounting a portorage of about half a league. The river Maubajan is formed by these lagoons, and by it the Rio Negro is reached. Descending the Rio Negro by turning to the left, they get to the Amazon, and ascending the same river by turning to the right, they enter the Orinoco.

I have stated this so that it may be known that the Dutch, by means of the navigation of the Essequibo, communicate with Barinas — ”

that was a Spanish province away to the west —

“ as well as with the Paragua, the head-waters of the Caroni,” etc.

Will the Tribunal glance at the map and see where these slave raiders went. They did not confine themselves to this little district. They went all the way to the Rio Negro, to the Amazon, all the way to the Orinoco, to Barinas, everywhere, to get these slaves. Can it be contended that this is to be taken seriously; that it is Dutch occupation! and yet it is alleged in the British Case. It is extraordinary :

“ But as this navigation is both difficult and very long they enter the Caroni from the Essequibo, as also the Paragua, for all these rivers are communicable with the Essequibo, into which flow

the Cuyuni, Yuruama, Supama, Yuruario; this Yuruama has many ravines and 'morichales' which communicate with the Caroni.

We also know that numbers of Dutch besides those who go to the Paragua remain in the places called Tucupo, Capi, and Paraman to buy slaves. "

Those are places where, on the British map, are marked Dutch residences and it is upon those Dutch residences and that occupation that they are resting to-day :

" These places are in the interior some three or four days journey from the outermost missions and are situated in the forests which extend to the plantations of Essequibo without any more savannahs intervening. There are generally Dutch merchants — "

And let me call attention to page 82 of the British Case where it says :

" In 1758 Dutch merchants resided in Tucupo. "

Lord Russell. — The slave trade was not considered so odious then as it is now, either across the Atlantic or on this side of it.

Mr Mallet-Prevost. — I do not care about that, my Lord, because I point to this : it covered the whole of the northern part of South America and if any rights are to be derived from it they would be entitled to the whole of this region. Why cannot they rest their rights upon this? On what ground can the presence of these itinerant slave raiders be made the basis of Dutch merchants residing here, and Dutch settlements? And yet it is upon no other basis that these allegations are made. It is astounding when you come to read this evidence to see the flimsy basis that there is for this whole matter :

" There are generally Dutch merchants in those places for the Caribs bring them the slaves there as well as some horses, as happened in [17]49 when a mulatto woman from Essequibo bought them. This however is not of frequent occurrence owing to the great distance and want of pastures in these forests for the animals, so that they perish or are lost in the regions about Tucupo and Paraman. Or, again, the Dutch come overland from Essequibo, accompanied by Indian porters carrying large baskets filled with articles of barter for slave traffic; or by water by the Essequibo, Cuyuni, and Curumo.

This last is a river which before entering Cuyuni receives the waters of the Tucupo and Matenambo; both are navigable in the rainy season; and although not long rivers, four or five days' navigation being sufficient to reach their head-waters, they, nevertheless, serve the purpose of the enemy, who are thereby easily enabled to reach our missions. "

That is where the slave raiders went :

“ But besides this route the slave buyers are also enabled to communicate with the Tucupo by means of the River Moroco where the post of Essequibo is situated or by the river Waini —

Coming over these mountains was nothing that was an obstacle to these fellows —

all which rivers flow out near the mouth of the Orinoco. By these rivers they ascend, navigating until they reach the Paraman where the Caribs dwell in great numbers. ”

Lord Russell. — Where is the Paraman; is it a tributary of the Waini?

Mr Mallet-Prevost. — No; it is further off.

Lord Russell. — Surely it is a tributary of the Waini?

Mr Mallet-Prevost. — Possibly it may be referring to the Barama.

where the Caribs dwell in great numbers. From Moroco and Waini the said slave dealers also come; and by the Orinoco they enter the Aguirre and Carapo. Although they have no fixed time for their journeys, for they come and go whenever they choose — ”

of course there was no permanent settlement there —

“ it is, nevertheless, well-known that they are firmly fixed there for the greater part of the year. Indeed, numbers of them have lived there for more than ten years permanently among the Caribs, carrying on their slave traffic; and these without moving send the slaves to their agents in Essequibo, and receive in return merchandize and other articles, by which they are enabled to purchase more from the Caribs. The least time they remain in these places is a year, but more generally they reside there for two or three years. This slave trade has so completely changed the Caribs that their only occupation is constantly going to and returning from war, selling and killing the Indians of those nations already mentioned ”.

In this connection let me remind the Tribunal of the prohibition there was on the part of the Dutch Governor to live in this quarter.

Lord Russell. — I thought it was earlier that the slave trade was abolished.

Mr Mallet-Prevost. — By the Essequibo Company does your Lordship mean?

Lord Russell. — Yes.

Mr Mallet-Prevost. — No not till after 1800.

Sir Richard Webster. — I think your Lordship is thinking of enslaving certain tribes.

Mr Mallet-Prevost. — The policy of the Dutch was not to enslave the

Indians immediately about them. It was to go into Spanish territory and regions beyond, where they could sell the Indians :

“ And not only the Caribs of the forests, but even those of the missions, participate in these wars, without our being able to control them in any way; and whenever we make any effort to do so they immediately desert us in great numbers.

It is very easy to close the port to the enemy so that neither the Dutch nor Caribs may be able to communicate by the Essequibo, Cuyuni, Yuruary and Caroni with the above mentioned nations by establishing a village, if not exclusively of Spaniards at least of chosen Indians, with a garrison of at least ten soldiers to permanently reside there within the fort sufficiently protected by swivel guns; this to be situated at the mouth of the Corumo or on one of the islands in the Cuyuni. ”

I want to call attention to this because it is the earliest suggestion we have of a plan which was carried out many years later that some fort be established at the mouth of the Curumo for the very purpose of controlling that region. It was to stop this slave trade and to erect a barrier there against the passing of these Caribs into Spanish territory that lay away beyond the Orinoco. It was to drive the Caribs out of that river and that is the effect it had finally. It was a strategic point from which control was to be exercised above and below.

“ By this means the pass would be closed, and the entrance to the Rivers Yuruana and Yuruary blocked, thereby also closing the Corumo. This village would equally insure respect, and greatly hinder the Dutch from carrying on their slave traffic in Tucupo, on account of its close proximity, and on account of the means of communication which would be established between the Indians of the village and the soldiers of the fort. This village would be of such great advantage that it would prevent the enemy from ever ascending by those rivers, and the Caribs of Miamo, Carapo, and Cunuri from descending by them to Essequibo with slaves, and I believe they would then remain more secure in the Missions, as they would thereby be prevented from communicating with the Caribs of the Cuyuni and Essequibo. But if efforts be not made within a short time to close the pass, the tribes already reduced, which are those persecuted, will be completely exterminated.

It is very sad to see the Indians settling about the Yuruary carried off for slaves. Indeed it appears to me that the Dutch were never so eager in their pursuit after slaves as they are at present, and it is precisely on that account that so little fruit is obtained in the efforts made to convert the Indians and Caribs, for, being counselled by the Dutch not to allow themselves to

be drawn into the Missions, they do not like the villages, and, consequently, retire to the forests. It was precisely owing to these bad counsels, that the Indians of the four Missions rebelled in the year [17]50, for they were told at the time that they would be made the slaves of the Spaniards if they allowed themselves to be drawn into the villages, and, consequently, would not be permitted to go to war or have any intercourse with the Flemings.

I also give you the news which I myself received from Moyo, &c., who, on coming from Essequibo for the purpose of becoming a Christian when he was baptized, told me he had brought many papers from Essequibo, and among them an official document in which the jurisdiction of the Governor was marked down. This, according to what he said, extends to the mouth of the Aguirre, and from that mouth a straight line due south shows the division of the jurisdiction of his Governor, so that the said line extends to the margins of the outermost savannahs of our missions of Miamo, &c. The said line passes by Tucupo and Corumo, and crosses to the before-mentioned Aripamuri.

I consider, if this news be true which the said party gave me, that they have cut the stolen cloth to suit their taste. ”

That shows what he meant about those frontiers; he was not accepting them :

“ And it must be true, for it is proved by the fact that the Governors sometimes give permits in which these boundaries are marked. All this, however, is well known and public. But the pity is, the slave-traffickers are never tracked.

“ And while His Majesty charges the Magistrates strongly to endeavour by every means to have the reduced Indians well treated, and equally recommends the Indians to keep the peace with the Spaniards, and defend them from those who make war upon them, I may mention that all those nations which I have mentioned above belong to this category, and the only thing required is more workers to go and invite the other Indians to come and live in the villages, like the Barinagotos. And so great is the spite of the Caribs against them on this account, that they (the Caribs) call them by no other names than the Guaica slaves, the Barinagotos slaves, Amarucatos slaves, &c., and they say they are slaves even before they are seized.

“ These nations would be glad to know whether the Spaniards can defend them by apprehending the slave-dealers who buy them. ”

And this emphasizes the distinction that there was between the relations of these Indians to the Spaniards and the relations of the other

Indians to the Dutch. These Indians appeal to the Spaniards for protection and we shall see what was done. The Caribs appealed to the Dutch and the Dutch told them to take care of themselves and that they had no means to defend them.

Mr President, it was that report which is so significant and full of suggestion in this case that led to the measures taken by the Spanish authorities to clear this river of these Dutch slave-dealers.

Now I call attention to page 150.

The President. — Before you go to that I personally find this report is very important; especially if you look at the Third volume of the Appendix to the British Case at page 60 where the Spanish Governor Don Jose Diguja is writing about the province of Guiana, that this extensive province is for the greater part unknown and no intelligent person has gone into the interior, with the exception of the Reverend Catalonian Capuchin Fathers and that Prefect of the missions, Diguja says that the persons knew very little of the interior of the province. I quite agree from that point this report has great importance.

Mr Mallet-Prevost. — Very.

The President. — But at the same time Diguja says it confirms the question I put to you this morning whether the Spaniards had any very determined ideas or notions about their own frontiers.

Mr Mallet-Prevost. — I am coming to that point.

The President. — Yes, that will be very interesting indeed.

Mr Mallet-Prevost. — Very. I read that report because it was the report that gave rise to the Spanish action that resulted in the expulsion of the Dutch from this river and in line with your Excellency's suggestion I refer in the first place to the Order that was made and to a number of proceedings. In the first place the Order was made to eject these people from there. In the next place they were ejected. In the next place there were some proceedings upon the complaint of Gravesande and the Spaniards affirmed their right to this territory. I am just starting now upon the line of documents which brings forward that very point which you were good enough to suggest.

The President. — It is very interesting to know the opinions of the Spaniards about their own territory.

Mr Mallet-Prevost. — Very important. I read from page 150. This is the decree :

“ Whereas I am informed that on the island of Curamucuru in the river Cuyuni in the interior of this province there is a Dutchman named Jacobs with a negro of the same nationality living there established in houses and carrying on the inhuman traffic of enslaving Indians whom they purchase from the Caribs for tobacco, hatchets, cutlasses, munitions of war and other articles; and such being their business and that traffic being prohibited by law and by repeated Ordinances — ”

showing that he was here starting out to execute the laws of Spain in this territory —

to secure the observance of which, forts have been established and the missions of the Reverend Capuchin Fathers are protected by a detachment as the Fathers have experienced and are constantly apprehensive of the ruin of their settlements owing to this dangerous traffic ; and whereas in order firmly to maintain this traffic the Dutch and other foreigners influence the heathen Indians against the establishment of the settlements from which it results that the spread of the Gospel is not more extended in this province :

Therefore for the purpose of putting a stop to these prejudicial troubles and in order that the good intentions of His Majesty may be attained by preventing any extension of the claims which the Dutch are every day advancing further in this part of his dominions, I ordain and command Don Santiago Bonalde as Commandant and Don Luis Lopez de la Puente as second to proceed this day to the interior and to the settlement of the Yuruary. Embarking in the boats which they will find in that river provided with rowers, provisions, munitions of war and soldiers as described in the list which will be given to them and with the most trustworthy pilots they will go to the said island of Curamucuru for the purpose of apprehending the said Dutchmen and any other person that may there be found, as well Caribs as Indians of any other nation, and bring them as prisoners well guarded to this fortress, delivering up to the Reverend Father Prefect all the Indians that may be taken under the name of slaves; ”

showing a determination to exercise jurisdiction here not only over Spanish subjects but over any one that might be there of any nationality;

“ And that the object of the expedition which is in the name of His Majesty the King our Sovereign may be attained I request and charge the Reverend Father Prefect and the other fathers of the community to give and command to be given all and every help which the said Don Santiago Bonalde and Don Luis Lopez de la Puente may require as the Fathers have been accustomed to do with holy zeal on other occasions. And I ordain and command the soldiers and other persons who may go in the said boats to be under the orders and at the command of the said two principal officers alternatively. And subject in like manner will be all the Indians of the settlements through which they pass, with this provision, that any one who neglects to obey orders will be punished accordingly — ”

and so on.

Lord Russell. — Whereabouts is that island Curumacuro ?

Mr Mallet-Prevost. — It is alleged by our friends it is very far up. It makes no difference. This is an order made upon the report.

Lord Russell. — But it is not unimportant where it was.

Mr Mallet-Prevost. — I think it is in view of what has gone before and what came after, my Lord.

Lord Russell. — The order is to go to a particular place and act as the order directs.

Mr Mallet-Prevost. — It is more extensive than that.

Lord Russell. — At all events you do not agree where that island is?

Mr Mallet-Prevost. — I cannot place it, but our friends on the other side claim that it is somewhere above the Yuruari. I do not care where it is. It is information, that the Dutch Commandant had, that there were some Dutch slavers there and the order was to proceed to the said island —

“ For the purpose of apprehending the said Dutchmen and any other person that may there be found as well Caribs as Indians of any other nation and bring them as prisoners. ”

And as a matter of fact that expedition went down the river and the action was approved by the Government. It was made the subject of diplomatic complaint but everything it did was confirmed and after that I think the location of Curumacuro is immaterial.

Lord Russell. — I do not follow that. If it is very high up the river on Spanish territory where the Dutch were not claiming it is within the competence of the Spanish authorities to arrest anybody disobeying the ordinances of that kingdom.

Mr Mallet-Prevost. — In view of what I have read my Lord, stating that there were Dutchmen at this place it shows the spirit of the Spanish Government to make this order to get rid of the slave raiders. As a matter of fact that expedition went down to *here* (pointing on the map) and arrested Dutchmen and its action in that regard was confirmed by the Spanish Government. In view of that the destination seems to me to be immaterial.

Lord Russell. — It is not so material if that is so.

Mr Mallet-Prevost. — It is so, my Lord.

Lord Russell. — That is not acting within the limits of this decree.

Mr Mallet-Prevost. — If this order could be interpreted as being limited to that island the action of the Spanish authorities subsequently does away completely with the limitation, for what was done by these officers was confirmed by Spain.

Lord Russell. — Very well.

Lord Justice Collins. — Have you noticed that it is described as a secret expedition.

Mr Mallet-Prevost. — Of course it was, my Lord and I do not know of any police raid which is not secret. If you are going to catch a criminal you do not blow your trumpets so that he will hear them and get away. That was the secrecy about it, but there was not any secrecy

after these Dutchmen were arrested. There was not any backing water. Spain said; yes we have done it and we have done it because it was our territory. I will show that. General Tracy calls my attention to No. 5, at the top of page 152, which are the instructions that accompanied this order

“ When the prisoners are apprehended, if it is ascertained (as it is reported) that any other Dutch settlement exists higher up or lower down in the said river Cuyuni, and with the certainty that they can be taken, they will be attacked, and with the same precautions as in the preceding case brought to this fortress, as well as any Caribs that may be found living with them. And the slaves will be treated with love and kindness, and placed at the disposition of the Reverend Father Fray Benito de la Garriga. ”

That answers the question. It is difficult to carry all these papers in one's mind and as I turn over the pages of my notes I find that that is the passage which I was next going to refer to; and there are some others in that connection which I should like to read, the second paragraph on page 151 :

“ If during the journey they should meet with any boats with Indians in them, they will apprehend and take them along with them, questioning them meanwhile, as exactly as possible about all matters in relation to the commission with which they are charged, and in order also that they may serve as guides, being careful that they do not escape, lest they should give news of the motive of the expedition in going to those parts. ”

That is exactly in line with what I said; of course, they did not want to send heralds to these Dutchmen. They wanted to capture them and took precautions that the matter should be secret till the thing was executed. Also the third paragraph :

“ They must use every endeavour to ascertain the following points: how the said Dutch are there established, and whether the houses are built on a height or low down; if they have cannon or swivel-guns, or both; with what force; if the Indians who accompany them are armed; by what roads, paths, or footways they may enter the place without being heard, so as to take them by surprise; if they are stockaded, and if the points of their weapons are poisoned; if there be any concealed pits under false floors in the approaches; if they have sentinels, and, if so, in what places, and how these may be surprised. ”

Showing that the expedition was intended to be thorough and show-

ing also the necessity for secrecy. Then comes the fifth paragraph which I read, and then paragraph 7, on page 152.

“ If the Indian Carib called Bumutu should be met with they will apprehend him, as I am informed he is persecuting the settled Indians of his nation, and that he captures those of other nations for the purpose of selling them to the Dutch. And all other Indians engaged in this traffic should be treated in like manner — ”

this was an expedition against slave raiders —

“ the slaves being taken from them and placed at the disposition of the Reverend Father Prefect, as already indicated above, for the purpose of being instructed in the Christian religion and settled. ”

Those were the instructions that were given to this expedition.

Now I want to read the account of what took place and I read from page 159, between A and B :

“ That in respect to the fourth point, in order to make the more progress he made use of the Caribs who infest those parts and they conducted them in a friendly manner — ”

it shows these Indians supposed to have been Dutch subjects were ready to be friendly with the Spaniards. Here they are utilized in an attack upon the Dutch and yet these are the very Indians who, according to my learned friends, are controlled by the Dutch :

“ That, in respect to the fourth point, in order to make the more progress, he made use of the Caribs who infest those parts, and they conducted them in a friendly manner, taking all care that they should neither be observed nor heard, to a certain place (which he does not remember), where they met a white Dutchman about noon; and that he, without any attempt at flight, or making any resistance, allowed himself to be taken — ”

this was the first Dutchman above the post; he had not yet arrived at the post —

that from there they marched in company with the said Indians to the hut covered with palm branches and without side walls, where the Dutchman lived — ”

that was the post —

and which they reached after two days' navigation down stream — ”

that means two days' navigation after the Dutchman was arrested —

that being then quite near the above mentioned hut he waited for night as it appeared to him that darkness would be more favourable to their advance. All being arranged in good order (in which disposition he took the opinion and judgment of the Caribs themselves) — ”

will the Tribunal just note that, what the Caribs, these Dutch subjects, were doing —

and it then being about 7 or 8 o'clock at night, he commanded the said hut to be attacked. He found there a Dutchman who appeared to have been asleep in a hammock, and who, having been awakened by the barking of a dog, heard them approaching, and arose, and all together seized him, under the impression that he was armed and might attack them. ”

The Spaniards did not know at that time what resistance they might encounter and they took these precautions accordingly. Then down below :

“ That in regard to the fifth point of the instructions he made the inquiries commanded therein and that he was assured no other houses existed either above or below. ”

Showing that this expedition was not only intended to be thorough but it was thorough. He went to see what there was in the river Cuyuni from top to bottom and he did see.

Lord Russell. — He was assured.

Mr Mallet-Prevost. — That is the most that he could be, my Lord :

“ That, in regard to the seventh point, he considered it better to allow the aforementioned Caribs to return freely of their own accord, as they promised him they would, and as they accordingly did. Had he done otherwise he certainly would not have succeeded, as their number had increased; and the proof of what he here states is to be found in the fact that today a great part of those Caribs are to be found in the Missions of the Reverend Capuchins; that as regards the Indian Famuto, he heard nothing whatever about him. ”

That is the Indian he was ordered to arrest if he found him. Here we find in connection with this expedition that the Caribs aided the Spaniards in this expedition and after the thing was done they went and settled in Spanish missions and became Spanish subjects and these are the Indians through whom a title to this region is attempted to be derived.

Then at page 161 is another statement of this by de la Puente, the other Spaniard, and I read a brief extract from opposite B :

“ That, in respect to this point, after eight days navigation.

they arrived at an Indian Carib settlement, and there acquired the news of a Dutchman named Juan Baptista, who was accustomed to visit occasionally another settlement of Caribs. ”

Lord Russell. — It is very much the same.

Chief Justice Fuller. — They were twenty two days going up stream from the place where the post was to the missions.

Mr Mallet-Prevost. — Yes, showing it was a long distance the post was, away down near the Essequibo.

There is another account of this to be found in the British Counter Case Appendix at page 202, which is very important as it makes clear the location of these places. This is the account of Fray Benito de la Gar-riga. I read from opposite C :

“ They carried him off with one of his companions, and leaving the said settlement, which was a little below the Currumo, they arrived speedily at other settlements in the Island and Rapids of Arauceta, the Captain of which is the Chief Cayarivare, who was previously of Tupuquen and was unknown to the soldiers — ”

of course those were Indian settlements —

and having told him that they were going to seize the Dutch, he said he would accompany them; and they marched off at once, and navigating down stream found an Island of great elevation called Tocorapata, where the Post was a short time previously, (and they left it, as it had not sufficient lands for farms); and on the way they burnt the houses with those of the ten negroes, in which also lived several postholders. And after half a day's navigation they arrived at Aguigua, on the mainland, on this side of Cuyuni, where the Dutch had taken the preliminary steps for establishing the Post — the farm cleared and not burned, large, with one or two huts, with the object of at once making a stronghold when they had sufficient provisions; in the meantime they supported themselves on flour of maize and wheat, spending the articles of barter given them by the Governor for their support. ”

It makes it clear the Tokoropati site had been abandoned; the place actually raided was some distance down stream. Exactly what the location of that place down stream was, I think is a matter of very little importance. We have located it at Queribura, which nearly agrees with this and many other facts which, in Burr's report, are brought together to show where the raid was. But as the exact location is not a matter of great importance I do not propose to do more than refer the Tribunal to the argument on that point, which is presented by Burr, and not attempted to be met. Then on page 203 we have the further statement.

“ Having performed the expedition they were in want o supplies of food, so using two boats they captured from the Dutch in the place of some bark canoes they lost, they went up to the houses of Cayarivari to obtain cassava made from the manioc which the Indian women pulled up, who also cut the sticks of manioc and cast them down the river, saying that the Caribs were never more to dwell in that river, because the Dutch would make poitos of them and would be held responsible for the capture. And for that reason all the Caribs were already inclined to come to the Mission. But although I had charged the Captain to bring all the Caribs, and especially those who kept the purchasers of poitos in their houses, he told me that considering how very well they behaved with them he has thought it better not to disturb them from there, but gave them his warn- ings and threats. ”

And that was the way that the Spaniards dealt with these Caribs, and the way the Spaniards protected the inhabitants of these missions from Carib attacks.

Now, Gravesande received news of this attack, and he at once wrote to the Spanish officials making complaint of the arrest of these Dutchmen, and the record of the receipt by the officials in Santo Thomé of that mes- sage from Gravesande will be found at page 153 of this volume. I will not read it.

Lord Russell. — 154, I think.

Mr Mallet-Prevost. — It begins at the bottom of page 153 and 154 is the translation of the document itself. The record of the receipt by the authorities is at page 153.

Lord Russell. — The decree is at page 153.

Mr Mallet-Prevost. — Yes, that is what I mean. The letter itself is translated, at page 154.

Lord Russell. — He says :

“ It was with profound surprise that I learned from some Indians a few days ago that our post had been attacked by Spaniards, the chief of the said Post, his second-in-command — ”

Mr Mallet-Prevost. — I am going to read that. This is Grave- sande's letter pages 154 and 155 of volume II. It is important because it shows what Gravesande complained of :

“ It was with profound surprise that I learned from some Indians a few days ago that our post had been attacked by Spaniards, the chief of the said Post, his second in command, a slave of the Company, and a half bred woman with her chil- dren taken prisoners and the house burned down. This news I found difficult to credit as it appeared fabulous, and as there was no cause for the action. On that account I did not wish

to take the least step without first sending proper persons to make an ocular inspection.

These persons, on their return, confirm to me the truth of the fact, and from another report I learn that the persons mentioned are actually prisoners of war in Guayana.

What, Sir, am I to infer from an offence so directly opposed to the law of nations and to the Treaties of Peace and Alliance subsisting so happily and for such a length of time between His Catholic Majesty and their High Mightinesses the States General of the United Provinces?

How is it possible that one dare act in a manner so violent without any cause, and without previously making a complaint?

I am thoroughly convinced that His Catholic Majesty, far from approving an offence of this nature, will not be remiss in rendering the fullest justice to my Sovereigns, and inflicting an exemplary punishment upon those who thus dare to abuse their authority.

That great King has given such signal proofs of his affection and friendship for our Republic that I should have been content to transmit a report to my Sovereigns of the affair, leaving it to their prudence to obtain the satisfaction which the case demands; but the post I have the honour to hold obliges me to make the first advance, and, in their name, to address myself to you, Sir, for the purpose of demanding, not only the enlargement of the prisoners, but a proper satisfaction for an outrage so opposed to Treaties and the law of nations. ”

And note; he does not ask to be reinstated in the post; he asks satisfaction for the arrest of these persons and asks for their release.

“ I have had the honour of being at the head of this Colony, and have always tried to cultivate the friendship of the Spanish nation, our nearest neighbours. I have always employed every means in my power to prevent the Carib Indians from doing them the least injury, and if those who have been employed in this irresponsible action have taken care to seize the papers which were at the Post, you will see that one of the principal articles of the instructions contains an express order not to give the least cause of complaint to our neighbours the Spaniards. ”

That is the article I read this morning to the Tribunal :

“ It would be by no means difficult to me to make reprisals, having the necessary resources at hand to do so — ”

I do not know if I use an American expression when I say that is

pretty good bluff; in view of the statements I gave as to the strength of the Dutch Colony yesterday, I think it is decidedly a bluff —

but I see no reason to make use of them, considering such action would be contrary to the duty of an honourable man and to the character of a Christian, and only permissible in extreme cases, when all other means are found unavailable.

By a vessel leaving here this week for Europe I have sent a full report of this outrage to my masters. I have not the least doubt of the great surprise it will cause them, and that they will lose no time in presenting a complaint relative to it at the Court of His Catholic Majesty.

Now, Sir, I demand, in the name of Their High Mightinesses, my Sovereigns, and the Directors of the Company, my masters, the enlargement and immediate return of the prisoners, together with an indemnity for the losses and injuries which they have suffered.

“ I declare in the most formal manner my intention of holding you responsible, in case of refusal, for whatever may naturally result from an affair of such gravity, as there never has been any reason for reproaching me and I have always been disposed to cultivate the friendship of and good relations with our neighbours; and I shall persist in the same feelings so long as I am not forced to act contrary thereto. ”

Now a word on that whole project about territorial rights. It is from beginning to end a statement or complaint as to the arrest of these Dutchmen and a demand that they be liberated and amends made for their arrest.

Lord Russell. — Would there be any ground for any complaint except on a suggestion of territorial rights seeing that they arrested these persons because they were supposed to be committing a crime according to the law of Spain?

Mr Mallet-Prevost. — I think, my Lord, in view of the way that Gravesande puts this, and that he claimed jurisdiction over Dutchmen wherever they might be, and is here referring to the arrest of these men, it was a complaint not of trespass on Dutch territory, but an arrest of these Dutch citizens.

Lord Russell. — What cause of complaint is there in the arrest of a Dutch citizen who has trespassed in Spain against the law of Spain, and who is arrested in Spain?

Mr Mallet-Prevost. — The trespass upon territorial domain is a vastly more serious and important question than the arrest of an individual; and it seems to me, if one nation goes upon the territory of another, and arrests a subject upon that territory, the first thought that would be in the mind of the nation that was aggrieved would be there was an invasion of territory.

Lord Russell. — I should say so certainly.

Mr Mallet-Prevost. — And he speaks of the fact this was done without notice to him. It does seem to me it does not point to any territorial question the way it is put. The other being so much more important, if that had been in his mind, that is the subject that would have been brought forward and not simply the arrest of Dutchmen without notice to him.

I wish to refer now to the action of the Spanish authorities.

Lord Russell. — It is a matter we can all form our judgment about, that statement of the attack upon our Post by you the Spaniards coupled with the arrest at that our Post; it involves, in fact the complaint necessarily involved, a statement of an aggression upon territory.

Mr Mallet-Prevost. — I think, as a matter of fact, it amounts to very little whether territorial or not. It seems to me in view of the action taken by Spain and practically acquiesced in subsequently by the Dutch it makes very little difference.

I pass now to consider the action of the Spanish authorities in answer to this, and I refer to the bottom of page 156.

Lord Russell. — Is this the complaint that rested so long?

Mr Mallet-Prevost. — No, this is a statement by Gravesande to the Spanish authorities at Santo Thomé, and this is what the Spanish authorities at Santo Thomé did; at the bottom of page 156 in volume II.

“ The translations of the document and two passports that were brought by the two Government officers who came in the vessel from the Colony of Essequibo having been seen by the Señor Comandante, Don Juan Valdés, and his Excellency having studied their contents, and taken note of the demand made by the Governor of the said Colony with regard to giving satisfaction for certain injuries done, and the remission of the two Dutch subjects seized in the River Cuyuni by the secret expedition, together with the various other events resulting therefrom, appear from the said letter which it was the duty of His Excellency to resolve, and he did resolve that the said passports and documents, together with their respective translations, and the report of the inspection made by the Lieutenant of the Royal officials be added to these papers, and that as this was a matter that solely concerned the Captaincy-General of these Provinces, the two Dutchmen should be sent to the Captaincy-General, together with a copy of the various reports of steps taken in connection with their visit and of all the remaining documents which have been drawn up so far in regard to the matter, leaving the instruments in the hands of His Excellency the Governor and Captain General for his superior judgment. ”

So that the matter was referred as I said this morning to the Captain-General and his action is recorded at page 169, at the bottom of the page.

“ The Commandant of Guiana has forwarded to me among other documents a letter which you sent him —

this is addressed to vans' Gravesande —

claiming the two Dutch prisoners, a negro slave, and a half-breed woman with her children, whom the guard dispatched from that fort seized in an island of the River Cuyuni, established there in a house, and carrying on the unjust traffic of slavery among the Indians, in the dominions of the King my Sovereign. ”

And that is the first paragraph to which I desire to call the attention of his Excellency the President in answer to the question of the ideas of the Spaniards as to the extent of their domains. This is the answer of the Captain General, in which he states that what was done was done in execution of the law within the dominions of the King, his Sovereign :

“ As this same river Cuyuni and all its territory is included in those dominions, it is incredible that their High Mightinesses the States General should have authorized you to penetrate into those dominions, and still less to carry on a traffic in the persons of the Indians belonging to the settlements and territories of the Spaniards. I therefore consider myself justified in approving the conduct of this expedition. For these reasons I do not consider myself at liberty to allow the restitution of the prisoners which you demand until the question is decided by my Sovereign, to whom I am rendering full account of all that has happened, supported by all the necessary documents. ”

There is an assertion of sovereign right by Spain, and approval of what the Spanish officers had done, and that is the first answer that Gravesande received to his complaint.

The President. — I am sorry to see the same Governor in his notes says he does not know very much about the boundaries of the whole Province, and the notions which he has, and the reports, are of Indians who are “ less than worthy of credit. ” I only state that the Spaniards themselves had perhaps some confused notion about the boundaries of the territory they were obliged to protect. That is from the notes published in the third volume of the Appendix to the British Case.

Mr Mallet-Prevost. — Yes. If I might say one word in answer to that, before we adjourn, I would say this : that whatever hazy notions the Spaniards may have had as to how far their boundaries extended, and we have their maps, which show those claims extending along Guiana over to the Amazon, and leaving to the Dutch and French what they had upon the coast, there are some points within that territory about which there was no doubt. I do not care today what notions they may have had or how hazy they were as to their right, away over to the Amazon or

far into the interior. I do not say that *there* they could have drawn a distinct line, or that they had any definite line separating what they considered as theirs in the interior, from French Guiana on the coast. But I do say in an action of this kind we have the solemn declaration of the Spaniards that is Spanish territory; there may be some doubt about some, but as to others there is that answer, and I do not think there can be anything more clear than that.

The President. — You think about the interior their notion was clear and fixed?

Mr Mallet-Preyost. — No; but about this part of the Cuyuni I say they were determined and fixed.

(Adjourned till tomorrow at 11 o'clock.)

TWENTY-SIXTH DAY'S PROCEEDINGS AUGUST 9 1899

The President. — Mr Mallet-Prevost, the Tribunal is ready to hear you.

Mr Mallet-Prevost. — Mr President, when the Tribunal adjourned, I had just finished reading the reply of the Captain General to the communication which was sent to him by Storm van's Gravesande, that reply being dated November the 9th, 1758, and being noted in the second volume of the Appendix to the British Case at pages 169 and 170. In that reply, as I pointed out, the Captain General distinctly asserted that what had been done had been done because the laws of Spain were being violated upon Spanish territory, and he refused to make any reparation in the matter.

The next document, which is in line with the Captain General's reply, is to be found in that same volume; second volume of the Appendix to the British Case, page 170. It is the record of the reference of the matter to a Counsellor and a statement of his report. These matters were referred to this Counsellor at Cumaná, and this is what he says :

“ The Counsellor has seen these documents, and says that whereas the foreigners to which the above documents refer were apprehended, whilst acting as a guard, by order of the Governor of the colony of Essequibo, within the limits of the jurisdiction of this Government for the purpose of apprehending fugitive negro slaves deserting from their masters who may pass by those places, committing the impious act of purchasing many Indians to work on their farms, and subjecting them to perpetual slavery, as is shown by the account which the aforementioned foreigners presented for the recovery of certain slaves, and also by the instructions issued by the Governor of that colony, by which the said guard is charged to procure the Indians; and whereas by the said account it is further shown that the soldiers of the guard did carry on that traffic, thereby depriving the natives of their natural liberty, which they should be allowed to enjoy, without instructing them in our holy Catholic faith; in opposition to His Majesty's commands, as ordered and decreed in various Royal Decrees, in which His Majesty (whom God preserve) expressly recommends that the Indians be well treated, not deprived of their liberty, and receive proper instruction in our holy faith; therefore, as this is an affair of the greatest importance, and worthy of the Royal consideration, and in order that His Majesty

may determine and make known his Royal pleasure in regard to it, so as to put a stop to the perpetual enslavements to which the said foreigners subject the said Indians, and that henceforth they may not suffer the grave injury of being slaves, is of opinion that the said documents be forwarded to His Majesty in original — ”

again confirming what the Captain General had stated, that the Spanish action was justified because it was in execution of Spanish laws on Spanish territory. Yet, in the face of the statement which I have just read and in the face of the statement of the Captain General himself, it is asserted in the British Counter Case that

“ Assertion of Sovereign rights or political control by Spain in the territory now in dispute there was none ”.

That is on page 102 of the British Counter Case.

As to the legal effect of the Spanish attack upon this post, I should like to read the words of the Attorney General spoken when he was discussing the question of control. I read from page 829 of the notes of his speech :

“ You may have just as good control though you do not occupy a square inch of land, and I think I must have expressed myself badly for the Chief Justice of the United States to have asked me if my contention was that the Venezuelans must be there. If you occupy a coast and there is an island opposite you, and anybody comes on that island and you turn them off, that is just as much an occupation because you have the control of it. Here, if it was the fact that Santo Thomé controlled this territory, then the settlement of Santo Thomé would give Spain a good title, and not a word of mine would have been urged to dispute it ”.

That statement (and it is a correct statement) of the law made, not in relation to this interior territory, but it is a statement of the law which fully applies here. Here was Spain who in the exercise of her rights as a sovereign, went down to the station below Tokoropati, and arrested the Dutch who were there violating the laws of Spain, justified that arrest afterwards, and refused to make reparation for it. Does not that come directly within the definition of what was given by the Attorney General himself of what control is? Is not that control by Spain, according to his own definition, to be taken to be good occupation by Spain at that point?

Mr Justice Brewer. — Was any further action taken by Spain or by Holland in reference to that?

Mr Mallet-Prevost. — Yes; Mr Justice Brewer, I will come to that.

Lord Russell. — On the next page, page 171, there is a suggestion of

what was going on. Iturriaga was writing in the same year 1758, and it shows what was going on :

“ Meanwhile it was discovered that the Dutch of Esse-
quibo were continuing their usurpations on the river Cuyuni,
and although they were dislodged — ”

and so on; and then it goes on thus :

“ We fear they now intend to recover the lost Posts ”.

Mr Mallet-Prevost. — Well, my Lord, I am going to go through the whole history of what was happening at that time.

Lord Justice Collins. — The whole subject was made the subject of remonstrance to the Spanish Crown.

Mr Mallet-Prevost. — Yes ; and I am going to read that remonstrance. But I want, just before reading that, to read a letter to Storm van 's Gravesande from the Company, which is in this second volume at page 174. Of course, Gravesande had, in the meantime, reported to the Company what had taken place. I read his report yesterday, and this is what the Company answered him. I read from page 174, opposite D :

“ Meanwhile we should like on this occasion to be exactly informed where the aforesaid Post on the River of Cuyuni was situated; for in the latest map made by you of the Colony we have found indeed, that river, but have not yet succeeded in finding the Post itself; ”

and I cannot help remarking as I read this language how extraordinary it is that the Company should be obliged to tell the Commandeur that they had found the river.

“ Furthermore, what grounds you might be able to give us to further support our right to the possession of the aforesaid Post.

The Company did not know what right it had !

“ Perhaps a declaration by the oldest inhabitants of the Colony could in this connection be handed in, which might be of service. We should also like to have a more specific description of the Map of America by M. D'Anville, to which you appeal ; for that gentleman has issued many maps dealing with that continent, and in none of these which have come to our notice have we been able to discover any traces [of what you mention].

showing the utter ignorance of the Company at that time as to what its rights were in the Cuyuni.

Now I come to the remonstrance of 1759. It is at page 176 :

“ Read to the [States-General in] Session the Remonstrance of the Directors of the West India Company of the Chamber of

Zeeland, acting on account of the general Company as having the special direction and care of the Colony of the River Essequibo and the rivers thereto subject, setting forth that they, in the aforesaid capacity, have been from time immemorial in undisturbed possession, not alone of the aforesaid River Essequibo, but also of all the branches and tributaries which belonged to the river aforesaid, and flow into it, and especially of the northernmost arm of the same river, called the Cuyuni.

Right here, I stop a moment to point out this fact, that, before this statement was made by the States General, all the information which the Company had been able to get from Storm van 's Gravesande was that the Company had been in possession of the River Cuyuni because they had had an indigo plantation there, because of the coffee plantations that were there, because the dwelling place of the Creoles was there — all places that were below those lowest falls. And I shall show, when this remonstrance was presented, that in the subsequent correspondence between the Company and Gravesande, in which the Company were seeking information as to rights in that river, the same thing was always reiterated, without any other possession being referred to. I ought also to have mentioned the mining of Hildebrandt.

“ That they, the remonstrants, in virtue of that possession, have always considered the said River Cuyuni as a domain of this State — ”

we know how they had considered it, for we have seen the correspondence, and know what part of it they considered as such —

“ and have, in consequence, built on its banks a so-called Post, being a wooden habitation, which, like several others in the aforesaid Colony, they have guarded by a Postholder and outpostman with some slaves.

That, accordingly, it is only with the most extreme astonishment that the remonstrants have learnt from the Director-General of the said Colony, Laurens Storm van 's Gravesande, that a troop of Spaniards, reckoned at 100 men, had come from Orinoco towards the end of August of the last year (1758), had attacked, overcome, and burned the said Post; and, further, had carried off to Guayana as prisoners the Postholder and assistant, as well as a creole man and woman, with their children.

That the said Director-General, Storm van 's Gravesande, suspecting that the said outrage was committed by a troop of violent people, without the knowledge or orders of the Spanish Government, addressed a letter, in the first instance, dated the last day of September, 1758 — ”

Lord Russell. — This has all been read. If you would kindly only remind us of the effect of it, I think that would be enough, would not it, Mr Mallet-Prevost? All this was read by the Attorney General.

Mr Mallet-Prevost. — Yes; it has all been read before, my Lord, but I think that some of these passages, are so important —

Lord Russell. — Then by all means read them.

Mr Mallet-Prevost. — I have omitted from the reading of extracts a great deal, and I am cutting everything as short as I possibly can, sometimes I even think too much so.

Lord Russell. — I do not want to stop you in the least.

Mr Mallet-Prevost. — I am sorry if I am reading anything that your Lordship thinks unnecessary. I will however read down below B on the next page :

“ The remonstrants therefore pray, for the reasons alleged, that their High Mightinesses may be pleased to cause such representations to be made to the Court of His Catholic Majesty that reparation may be made for the said hostilities, and that the remonstrants may be reinstated in the quiet possession of the said Post situated on the banks of the River Cuyuni, and also that, through their High Mightinesses and the Court of Madrid, a proper delimitation between the Colony of Essequibo and the River Orinoco may be laid down by authority, so as to prevent any future dispute. ”

And then lower down, the Ambassador of the Netherlands at the Court of Spain was instructed to “ insist upon prompt reparation for these hostilities and on the reinstatement of the said Directors in the undisturbed possession of the aforesaid Post. ” And I want to call attention in connection with this remonstrance in the first place that as yet the Company make no definite claim to any definite territory. They are saying that the Spaniards have come down and have taken this Post and have arrested Dutchmen, and all that they ask is in the first place to be reinstated in the possession of that Post, and in the second place they ask that some delimitation of the frontiers be made, and the correspondence which follows this shows clearly why they did not at this time present any definite claim of territory. They did not know what to claim.

Lord Russell. — Was not this a definite claim?

Mr Mallet-Prevost. — No; my Lord.

Lord Russell. — They say that they

“ have been from time immemorial in undisturbed possession not alone of the aforesaid River Essequibo, but also of all the branches and tributaries which belonged to the river aforesaid and flow into it, and especially of the northernmost arm of the same river called the Cuyuni ”.

Mr Mallet-Prevost. — Yes; but they did not mean when they used

that language to claim the whole river Cuyuni. That is perfectly clear from the subsequent correspondence, and when they speak about immemorial possession, as I pointed out sometime ago, that immemorial possession was limited in their minds, as it was in fact, to the occupation of this river at its very mouth. The only thing beyond that was the prospecting of Hildebrandt, in the year 1742, and they reached nothing more. I shall show by subsequent references that they could not have had in mind the whole Cuyuni river. Of course this was a matter that was regarded as of grave importance, by the Netherlands; a matter which, if they had had the power to do otherwise, they would not have allowed to sleep. On page 179, of this same volume, we have the statement of the Netherlands' Envoy in Madrid as to his having presented this remonstrance to the Secretary of Foreign Affairs of Spain and having urged that the matter should be considered by Spain. Then we have in the second volume of the Venezuelan Case a document which I have already read but which I think is most important in this connection. At page 135 we have the statement of what it was that the Ambassador of the Netherlands said to the Spanish Secretary of State at that time. It is a passage which I have already read, but it is a most important passage because it shows what the Dutch were thinking, at this time, in regard to the river Cuyuni.

“ Before the undersigned Ambassador can set before your Excellency the acts which form the subject of the present communication, and with respect to which he is directed by his masters to demand due satisfaction of this Crown, he must first call your Excellency's attention to the fact that his masters have been from time immemorial in undisturbed possession of the River Essequibo, and all the little rivers which flow into it — ”

and I call attention to that expression “ all the little rivers which flow into it. ” That shows that he thought that he was speaking of some little stream that was flowing into the Essequibo and not this great Cuyuni river —

“ and all the little rivers which flow into it, and especially of the right arm of the said river, which flows northwards, and is called the Cuyuni; that, in virtue of the said possession, his masters have for a very long time considered the whole of the said river as a domain belonging to them — ”

the man had no conception of what that language meant —

“ and have consequently caused to be constructed as they have in many other places in the Colony a wooden station to serve as an outpost — ”

just consider what that means: there is an outpost. Look at the location of that outpost and then look at the extent of the River Cuyuni beyond it.

“ as to which the Spanish Governors have never raised any objection, or made the least complaint, understanding that such outposts are absolutely necessary to us for the maintenance of the peace of the Colony against the raids of the savages, and are constructed with no other object — ”

constructed for protection against those supposed subjects of theirs !

I think I have in another connection read another letter which I shall now only refer to. At pages 210 and 211 of the second volume of the Appendix to the British Case there is a letter from Storm van 'sGravesande to the Company, on February the 9th, 1762, in which he shows the greatest anxiety about the action that has been taken by the Dutch authorities and urging them to press for some answer in this regard. I think that the other letters and the subsequent history of this remonstrance can probably be better considered in connection with the history of the next Post of 1766-1772, and therefore I pass to that now.

Of course the same general claims are made by Great Britain with regard to the period covered by the Post of 1766-1772 as were made with regard to the former period. It is claimed on behalf of Great Britain that not only prior to the year 1758 but through the whole century the Dutch were in possession, were in occupation, and were in control of these various rivers, and with regard to the Post of 1766, the British Case makes this statement which is a most important one as an introduction to the history of the next few years. I read now from page 49 of the British Case, beginning at line 23 :

“ The Spaniards never occupied the Cuyuni. It was expected by the Spaniards that the Dutch would at once reoccupy the Post. In fact they did formally reoccupy the Cuyuni with a Post in 1766. They would have reoccupied it sooner had it not been that all their available energies were temporarily diverted to assisting in the suppression of a negro revolt in Berbice. While there was no Post provisional arrangements were made for watching the river. ”

Mr President, this statement taken in connection with general claims of Great Britain which have already been considered in connection with the Post of 1758, may be regarded as containing the following specific allegations. In the *first* place, there is the allegation that, as to the intervening period between the year 1755 and the year 1766, between those two Posts, that the Cuyuni was occupied by the Dutch and not by the Spaniards. In the *second* place there is the allegation that the only reason why eight years were allowed to elapse before the establishment of this 1766 post was because of a negro revolt in Berbice which temporarily diverted the attention and engaged the energies of the Dutch. In the *third* place, there is the allegation that pending this period of eight years, the Dutch watched the river and that expression taken in connec-

tion with the general claims by Great Britain was undoubtedly intended to mean that they controlled the river. In the *fourth* place, the allegation is that where the new Post was re-established it constituted a formal re-occupation of the Cuyuni, or in other words, from this statement in the British Case, Mr President, one would have been warranted in assuming that the whole question of establishing or not establishing a Post in the Cuyuni was a matter which rested wholly with the Dutch and that the Dutch conduct during those eight years was entirely uninfluenced by anything that the Spaniards did. I think that that is a fair interpretation of what the British Case says :

“ If the Dutch did not at once re-occupy the Cuyuni, it was because they were attending to some important questions elsewhere, because this question of the Cuyuni was one of small importance that could wait, because in the meantime the Cuyuni was in the hands of the Dutch, and because the Dutch had not anything to fear from the Spaniard in that direction. ”

I think that that is what it implies, Mr President.

Now the evidence in the case contradicts every one of those statements or allegations, and the real state of affairs was this. The possession of the Cuyuni after the destruction of the Post of 1758 was a matter which both the Dutch Governor and the West India Company regarded as a matter of the very first importance. To immediately re-take possession of the destroyed Post or to place another Post in the river was a thing at that time so entirely impossible to the Dutch that it was not even suggested or thought of. It was frankly and fully admitted that for the time being, during those eight years at least, the Cuyuni was in Spanish hands, and that nothing could forcibly be done to oust them. At first, both by Storm van 's Gravesande and by the Company, it was thought that, possibly through diplomatic channels, something might be accomplished and hence the remonstrance of 1759 was presented. Long years of patient waiting followed, and during those years the Dutch were extremely anxious about the Cuyuni. It was not a matter that they regarded lightly. They were solicitous about the Spanish advance along the Cuyuni. They had no negro revolt or anything else that prevented their giving the Cuyuni their entire attention, It was five years after the year 1758, namely 1763, that the negro revolt happened which is alleged in the British Case as an excuse for their not occupying the Cuyuni. The Dutch were deterred from again going up that river, by one thing and by one thing only, and that was because the Spaniards were in possession, and the Dutch did not dare to come into conflict with them during all these years. The Dutch were suffering severe damage; their slaves were able to run away with impunity; their planters up about Kijkoveral, the few that were left there, were in constant dread of the Spaniards, even there below the lowest falls of the Cuyuni; the Carib Indians who had gone into partnership with the Dutch in the slave trade business were

being driven out by the Spaniards, during those years, some of them coming to the savannas to settle in the Spanish missions and others going to other places in the interior where they were freer from Spanish control and where they might continue to carry on their slave traffic. But, in the year 1763, the Dutch patience seems to have been nearly exhausted in awaiting the results of Spanish diplomacy, and five years after the destruction of that first Cuyuni Post in 1758, the Dutch Governor for the first time ventured to suggest to the Company that, as he expresses it, quietly and without any violence they should try another Post on that river. It was not until after those five years and after that suggestion that the negro revolt broke out in Berbice and even that revolt was over before the middle of the next year, the year 1764.

Notwithstanding that fact, two years were allowed to elapse after that revolt came to an end, before the Dutch put up another post; and when they finally did up put one, in 1766, it was considerably lower down than their first station and they had to come down near the settled region for fear of the Spaniards.

Now I propose to go through the evidence and prove every allegation I have made. Will the Tribunal kindly turn to page 171 of the second volume of the Appendix to the British Case. I want to read the extracts in the course of these years to show that both the Governor and the Company regarded this thing as a matter of the utmost importance. Page 171 opposite D :

“ The Governor of Berbice having acquainted me that a clipper there is to depart for Europe in the beginning of next month, I profit by the opportunity to inform your Honours that my Emissary to Orinoco has returned from thence with a very unsatisfactory reply from the Governor of Cumana to my letter to the Commandant of Orinoco, wherein he maintains, *inter alia*, that the River Cuyuni is Spanish territory, and refuses to give back the imprisoned Postholder, settler, and creoles. ”

And then below :

“ This treatment, against all justice, and contrary to the right of nations, and these so far reaching pretensions, being of the most extreme importance for this Colony, I do hope, and doubt not, that your Honours will employ all due means, through their High Mightinesses, to obtain proper satisfaction therefor.

On closing this letter, I take the liberty earnestly to recommend to your Honours' attention the case in Cuyuni as being of the greatest importance to this colony, that river forming one of the three arms of this river, and in which your Honours' indigo and coffee plantations, and a great portion of Duynenburg, are situated. ”

Then we have a reiteration of the grounds upon which Gravesande claimed this river :

“ If the Spaniards hold possession thereof we have them in the heart of the colony, and no one is for one hour certain of his possessions, the mouth of the said river being only a cannon shot from the old Fort Kijkoveral. ”

Showing when he spoke of the possession of that river he meant the possession of it away down to the Essequibo. On page 172 is another letter, opposite D :

“ There not being the slightest difficulty or doubt concerning the ownership of this portion of Essequibo, most undoubtedly belonging, as it does, to the West India Company, this unexpected and unheard-of act is a violation of all existing Treaties — a violation even of the universal law of nations, and as a matter of the greatest importance it demands your Lordships’ attention and vigilance. ”

And I point to the fact that if the Dutch Governor was controlling this region, if, as alleged in the British Case, the Dutch were in occupation of the Cuyuni and exercising control of it all these years, why did not Gravesande go and occupy the post; why was it necessary for him to wait on diplomatic action at home?

At page 174 we have a letter from the Company which very clearly shows that the Company was exceedingly uncertain as to its own rights in that quarter. I read above D :

“ Meanwhile we should like on this occasion to be exactly informed where the aforesaid Post on the River of Cuyuni was situated; for in the latest map made by you of the Colony we have found indeed, that river. ”

I read that this morning and I call attention to it in this connection, that the Company at that time is seeking information as to its rights. At page 180, at the top of the page, we have what Gravesande has to answer to these inquiries from the Company, as to the basis of their rights to the Cuyuni; and he says :

“ The time is too short to enable me to send what your Lordships require concerning Cuyuni, and in this despatch I shall have to content myself with informing your Lordships that Cuyuni being one of the three arms which constitute this river, and your Lordships having had for very many years the coffee and indigo plantation there, also that the mining master, with his men, having worked on the Blue Mountain in that river without the least opposition, the possession of that river, as far, too, as this side of the Wayne — ”

showing that Gravesande at that time had an idea it was only part of the Cuyuni which belonged to the Dutch.

“ which is pretended to be the boundary-line (although I think the latter ought to be extended as far as Barima), cannot be questioned in the least possible way, and your Lordships’ right of ownership is indisputable, and beyond all doubt. ”

And that reference to “ this side of the Waini, ” taken in connection with the d’Anville map which Gravesande had in mind, is most significant showing it was upon the basis of that he was calculating the right of the Dutch to a portion of that. It was practically a north and south line from the Waini he had in mind. I call attention to the fact that in answer to the Company’s request for information upon which they could base their title to that river he does not mention any Dutch occupation beyond the falls. Here we have statements there were Dutch residences. Why did not Gravesande allege them as a basis of Dutch right. Why does he limit himself to the indigo plantations.

Lord Russell. — I think he has in his mind, what will have to be discussed one time or the other, viz: What is the effect of having control of the mouths of these rivers.

Mr Mallet-Prevost. — Yes; that will have to be discussed, my Lord. That has nothing to do with what I am mentioning.

Lord Russell. — No; I suggest he does not state that.

Mr Mallet-Prevost. — Yes; my Lord, very good. Let me admit for one moment that he states that with an idea that he is claiming the watershed of those rivers; apart from that which is a pure claim, he is asked to give the grounds or facts upon which the right of the Dutch rests, and when he comes to enumerate the acts of occupation and possession upon which he stands, he limits himself to the indigo plantation and to these other things down in the lowest reaches.

Chief Justice Fuller. — He does say it would not make any difference if it was fifty hours up.

Mr Mallet-Prevost. — That comes later. I will refer to that but whether it is so or not, when asked for facts of occupation, he gives these facts and does not mention any Dutch settlement at the mouth of the Curumo or anywhere else.

Chief Justice Fuller. — That alleged fort or whatever it was at the mouth of the Curumo was in 1750. Have you discussed that at all?

Mr Mallet-Prevost. — No; I will discuss that. The whole basis of it is this. There is a passage in one or two documents which speaks of “ Hollandaises ” which means Dutchmen and has been translated, in the British columns, as Dutch families. They were nothing more than Dutch slave-traders and that is the whole basis for that Dutch settlement of 1750. I call attention to this, when you say fifty miles up would not make any difference; Gravesande refers to the Cuyuni and to “ this side of the Waini ”, showing he had in mind some limitation of the Cuyuni.

That is very clearly marked. It is practically anorth and south line from the mouth of the Waini. I wanted to read that because it was the direct answer which Gravesande made to the Company in answer to their inquiries; but I now want to go back to page 175, which is another letter of Gravesande, written the 20th of July, 1759, just below C :

“ The despatches received from Orinoco having been translated by Mr Persik, I found one to be from the Commandant Don Juan Valdés, in which he informs me that, being forbidden to enter into any correspondence concerning the matter of Cuyuni, he is obliged to send back my letter unopened; he adds that he has brought the matter to the notice of the King of Spain and that he has no doubt that I, too, have informed their High Mightinesses of the same, and that, therefore, the case would have to be decided not by ourselves but by our respective Sovereigns. This matter is of very great importance to the colony, because if the Spaniards remain in possession of Cuyuni — ”

that is most important in connection with the allegations made on the other side. The Dutch were in possession and the Spaniards never were —

“ which is one of the arms of this river, and in which there are coffee and indigo plantations belonging to your Lordships, as well as the estates of Old Duynenburg — ”

again going over all the grounds of occupation which he could allege —

“ there will be no safety at all in this Colony. A way for all evil-doers, deserters, and bankrupts will be quite open and free, and the Colony will be ruined immediately there is the least misunderstanding with Spain. Your Lordships will therefore see that this matter is fully deserving of your attention. The Spaniards continue to stay where they are, and to entrap and drive away all the Caribs living there. The latter, on their part, are not taking matters quietly, but are beginning to make a vigorous resistance, and to do much mischief in Orinoco itself. ”

Why, if all this was so important, and the Dutch had complete control, did not Gravesande go there and re-establish the post and drive the Spaniards out? At page 180 is a passage beginning at C. I read the first of this letter which was directly in answer to the Company. Now I desire to read at C :

“ And I have once more the honour to assure your Lordships that the whole security and peace of this Colony depends upon the possession of that river, and that without it no one can be in the least way certain of his property, and therefore

more than doubly worthy the attention of their High Mightinesses and your Lordships. I await with impatience your Lordships' orders, to which I shall conform strictly, and to the letter, and however aged and weak I may be, I shall be quite capable of finding means, if I am honoured with your Lordships' orders, and, provided too with some reinforcements, both of militia and of powder and arms, of obtaining proper satisfaction, and of securing that place, even if it should cost me my life, which I am ready and willing, with all my heart, to sacrifice for the commonweal. "

That man was not regarding this thing as something that did not concern the colony. He was not paying attention to some revolt at some place elsewhere, and therefore did not go there. He did not go there because he had not the power to go there.

At page 181 there is a letter from the West India Company to Gravesande and I read from below D :

" Wherefore we still request you to lay before us everything which might in any way be of service in proof of our right of ownership to, or possession of, the aforesaid river, because after receiving it we might perhaps present to the States-General a fuller Remonstrance on this head, with a statement of facts joined thereto. For this purpose there might especially be of use to us a small map of the River of Cuyuni, with indication of the places where the Company's Post, and also the grounds of " Oud Duinenburg " and of the Company's coffee and indigo plantations were situated, and, finally, of the so-called Blue Mountain in which the miners carried on their work for our account. "

Mr President, it is impossible to suppose that if the Company were seeking for this information and if there had been Dutch settlements away up that river and Dutch control of all the river for one hundred years that they would not have found enough to say to the States-General.

Then on page 182 C, we have this further statement in this same letter :

" We see from your letter that you extend — "

and I call attention to the word "extend"; the Company so regarded it —

" the boundary of the Colony in the direction of the Orinoco not only as far as Waini, but even as far as Barima. We should like to be informed of the grounds upon which you base this contention, and especially your inference that, Cuyuni being situate on this side of Waini, it must therefore necessarily belong to the Colony; for, so far as we know, there exist no Conventions that the boundary-lines in South America run in a straight line — "

Does not that show distinctly what the Company had in mind? They are speaking of the Cuyuni as being within sight of Waini. Will the Tribunal glance at that map. Take a line, I do not care which way. They speak of the Cuyuni as being “ *this side* ” of that line, that is towards the Dutch settlements. What did they have in mind when they were complaining to Gravesande and saying : Why do you think the colony this side should be ours? We do not know any reason. Give us what reasons you have. If Gravesande had been able to allege any settlement or control he would have done it. This correspondence between the Dutch Governor and the Company had been going on for years, the Company trying to get information and the Governor trying to get information. I have repeated that over and over again.

At page 144 is a letter from Gravesande to the Company. I read from the bottom of the page.

Lord Russell. — At page 181, I see they were waiting for an answer to the remonstrance. At D :

“ We fear that hardly anything decisive can be expected from it for some time in view of the change which has taken place in the aforesaid Kingdom. ”

Mr Mallet-Prevost. — It think it would be conducive to clearness if at the end of this I grouped the history of that remonstrance. I will give it to the Tribunal in full.

Lord Russell. — I wanted to know in passing what was that event?

Mr Mallet-Prevost. — The death of the King, I think, undoubtedly. I will go through the history of this remonstrance and the remonstrance of 1769. It can be shown by a few passages; I think it will come out more clearly if treated by itself. I was about to read from page 184, opposite F :

“ I have very little to add to what I have already had the honour of submitting to your Lordships in several of my despatches, and although I am aware, as your Lordships are pleased to inform me, that no Treaties have been made which decided that the dividing boundary in South America should run inland in a direct line from the sea-coast, as is the case with the English in North America, it still appears to me (*salvo meliori*) to be an irrefutable fact that the rivers themselves, which have been in the possession of your Lordships for such a large number of years, and have been inhabited by subjects of the State without any or the least opposition on the part of the Spanish — ”

of course he refers there to the possession below those falls —

“ are most certainly the property of your Lordships. I am strengthened in my view of this matter by the fact that

Cuyuni is not a separate river like Weyne and Pomeroon (which last has been occupied by us — ”

Lord Russell. — This has been read three times.

Mr Mallet-Prevost. — Yes; but it is so full of meaning at this time; I do not wish to repeat what is not necessary, but I think this brings out the condition of mind of those people at that time in a way that makes it worth while re-reading.

“ but an actual part of the River Essequibo itself, which is divided into three arms about 8 to 10 miles above Fort Zeelandia, and about one long cannon shot below Fort Kijkoveral, and to each of which the Indians give a separate name — ”

and so on :

“ Although I do not doubt that your Lordships will now have received the map compiled by Mr D’Anville, I have, in order to make the matter clear to your Lordships, copied that part of the map which relates to our possessions, and filled in with as much precision as possible the sites of your Lordships’ plantation of Duynenburg, situated partly in Massaruni and partly in Cuyuni. In Cuyuni I have marked your Lordships’ coffee plantation, indigo plantation, the dwelling-place of the half-free creoles (to which the Spaniards came very close) — ”

that is below the falls and he alleges possession of the river. What does he mean? Of course he means possession of the mouth and nothing else —

“ and Blauwenberg, and [the] Post which was sacked, together with the sites of your Lordships’ three other Posts in Maroco Maykouny, and Arinda, up in Essequibo. ”

That was all that Gravesande could allege at that time.

Lord Russell. — “ To which the Spaniards come very close. ” That is alluding to the attack?

Mr Mallet-Prevost. — No; I think he is referring to what he referred to — yes below; he believed the Spaniards were near there and had missions near there.

Lord Russell. — It is not “ come ” very close or “ are ” very close.

Mr Mallet-Prevost. — No; but he spoke about those missions and their subsequent destruction. At page 186, opposite D, is a letter from Gravesande again. This is 1760, two years after this. He has been speaking of the desertion of some creoles :

“ I immediately sent the Adjutant, a sergeant, and eight of the best soldiers to the plantation, which probably prevented a great many more slaves from deserting, and took measures to have the whole sea-coast guarded by Caribs, so that it was im-

possible for the slaves to get to Orinoco. What I most feared was that they might take the road through Cuyuni where, since the raid upon the Post by the Spaniards there are no more Indians, and there was therefore no means of stopping them. ”

Now this passage shows two things : *first*, the importance of controlling the Cuyuni. The slaves were running away and they did not control it and had no control over it and yet this is the time the Dutch were supposed to have been in occupation for hundreds of miles. Not only the Dutch were not there but the Indians on whom they depended were driven from there and that is made clear from subsequent extracts. I turn now to page 196, at the bottom of the page ; it is another letter from Gravesande :

“ On the 1st September I received information that the fifteen fugitives were on the other side of the plantation Nieuw Walcheren, where it was impossible to take them with a few men, that being but four hours’ distant from Cuyuni and the Blauwenberg. I immediately wrote to the Secretary to call a special meeting of the Court for the 4th, in order to deliberate upon the measures to be taken to put an end to this matter. ”

“ Meanwhile, I had sent warning to all the Posts, and had the coast guarded by the Carib nation, so that it should be impossible for the slaves to make off in that direction. The road to Cuyuni was open to them, because since the raid upon the Post there by the Spaniards the river has not been occupied, and the road to Orinoco is an open and easy one. ”

In the face of that statement we are told that that region was occupied and controlled. I am sorry, my Lord to have to draw attention to these facts so repeatedly, but I deem them matters of very great importance and in view of the serious allegations made by the other side I cannot pass these extracts without calling attention to what they show ; opposite D :

“ To what will this lead, your Lordships? If such acts of violence are not stopped, what will the results be? The River Cuyuni is still unguarded, and presents an easy road to fugitive slaves. I have not yet re-established the Post there, always hoping that the matter might receive redress in Europe. I could not act in the matter without using violence, and this I would not do without special orders. ”

In the year 1760, two years after, and the revolt had not yet come, in Berbice, and that is what is stated in the British Case to have prevented the immediate reoccupation. At page 199 is another letter from Gravesande, in the following year, 1761. I read from below D :

“ With the same vessel I had the honour to send your Lordships a copy of the map of this coast, which I had forgotten to inclose in my previous letter. I hope the matter concerning

Cuyuni will be brought to a happy issue, because it is really of the greatest importance for the Honourable Company. As the case appears to me, there can be no dispute about it with the Court of Spain, it being only too clear and evident that the Post not only stood upon the Honourable Company's territory, but that that territory extends much farther.

I am informed by the Indians that messengers are still constantly being sent to that river evidently to ascertain whether we are reestablishing the Post, in which case they would probably again make a raid upon the same."

I do not think that needs any comment. Then page 201, bottom of the page, again from Gravesande :

" Everything in the upper part of the river is in a state of upset, the people who live there bringing their best goods down the stream. This is because a party of Spaniards and Spanish Indians in Cuyuni have been down to the lowest fall, where your Lordships' indigo plantation is situated, driving all the Indians thence, and even, it is said, having killed several. The Indians sent in complaint upon complaint. I fear that bloodshed and murder will come of this because, if they come below the fall, the inhabitants will surely shoot upon them, and not allow them to approach, and what will the consequences of that be? We leave those people in peace. So long as I have had the honour of holding the command here I have embraced every opportunity of preventing the Indians from annoying them, and in this I have been fairly successful. Why cannot they leave us in peace! It is really insupportable how, contrary to the law of nature and the right of nations, they first come and attack our Post, make prisoners, and ill-treat the people in such a way that the Postholder's assistant has died from it, burn down the house and all it contained, and now still constantly come and disturb us."

That is below the lowest falls.

" It is no use complaining because the Commandant, Don Juan Valdéz, in Orinoco, whilst sending back the letter unopened which I had requested the Commandant to write to him, has written me to say that he is forbidden to enter into any written correspondence concerning the matter, and that we must address ourselves to the Court at Madrid.

If I were permitted, my Lords, to do as they are doing, I would risk my old head once more, and make them pay doubly for the annoyance they are causing us."

Why did not he do it if all this time the Dutch were in control ?

Lord Justice Collins. — The matter was under the arbitration of the King of Spain and he could not do it then. He could not both invoke the authority of the King of Spain and act as though he had not pronounced upon it.

Mr Mallet-Prevost. — I am meeting the allegation of fact that they were not there — not what rights they had to go there. It is alleged the Dutch were in occupation of the Cuyuni, and were controlling it, and the Spaniards were not there. I do not deal with the rights that grow out of the remonstrance but with the fact and I say everyone of these passages contradicts it.

Lord Russell. — Surely, you are saying at this moment, Why did not he go and make them pay double?

Mr Mallet-Prevost. — Who said that?

Lord Russell. — You did just now?

Mr Mallet-Prevost. — I base that not on a proposition of law. I say if they were in possession why did not they do this. I am dealing with the question of fact as to what was the occupation, possession and control at that time. The legal consequences will be discussed later. I am entitled to point to these things to show that they contradict the allegations of my learned friends on the other side.

At page 202; October 5th 1761, at D;

“ Considering that a great deal of contraband trade is now carried on in the Cuyuni River, which must, of course, be very injurious to the free Indians;

It has been resolved, in order to put a stop to this as far as possible, to order every one trading or going up that river to provide himself with a proper pass, which must be shown to C. Crewitz, at whose residence they are to make a halt; ”

Mr President, Crewitz, as appears from another extract, page 212 B, lived below the last fall and it was at that place that at this time the Dutch were having what might be called a post; that is as far as they dared to go. It is from there that they are supposed to have been watching the river. I turn to page 211, opposite A. This is from the West India Company in 1762 :

“ Concerning the affairs of Cuyuni we shall shortly present a further memorial to the States General ”.

They had been able to get absolutely nothing from Spain and if the protest which they made — I do not want to enter into a discussion as to the legal part of it, I will state this — if the protest they made in 1759 had been a protest which they kept alive and which they had not abandoned, though they did abandon it later as I shall show, both that and the one of 1769, it might be alleged they had no right to enter here, but when those protests were in fact abandoned, then it is impossible to

appeal to them today. At page 211, between C and D, is another statement by Gravesande :

“ I trust that your Lordships will not lose sight of the outrage in Cuyuni. That matter, my Lords, is of the utmost importance for many very weighty reasons, and more than any one in Europe could imagine. Neither my true zeal nor the real interest I take in the welfare of the Company or Colony, nor yet my oath and duty will allow me to sit still or to neglect this matter, and even if there were no important reasons which compelled the Honourable Company to take a real interest in the possession of Cuyuni, I cannot see why we should permit the Spaniards to disturb and appropriate our lawful possessions. Have they not land enough of their own, the possession of which is not disputed? Yes, much more than they can or ever will be able to govern.

“ They are not yet quiet, but send detachments from time to time, which come down as far as the lowest fall, close to the dwelling of your Lordships’ creoles, by which both the settlers and our Indians are continually being alarmed, and take refuge each time down stream. This is very annoying. They must have great and important reasons to make such attempts to obtain possession of this branch of our river, and I have not the least doubt that such is the case, but I hope, too, that your Lordships may find a means of stopping them.

As long as the Almighty gives me strength I shall not relax my efforts in looking for and bringing back the runaways. I am far too deeply convinced of the important consequences of this matter to let it rest. ”

And then again, page 213 opposite E, we have a further urging of his :

“ I hope their High Mightinesses will be pleased to arrive at a favourable Resolution respecting the affairs of Cuyuni, and receive justice in this matter from the Court of Spain. ”

Then, at page 214 opposite C, in 1762 :

“ From the reports received from the upper part of the river, I learn that the Spanish Indians of the Missions continue to send out daily patrols as far as the great fall (just below which your Lordships’ creoles live); all the Caribs have also left that river, and gone to live above Essequibo. ”

And on the same page 214 —

Lord Russell. — I have a note in this connection, I suppose from something said in the course of the discussion, at that time the nearest Spanish mission was a long way from the falls.

Mr Mallet-Prevost. — I am telling the story from the Dutch side and I will tell the story too from the Spanish side. I will not overlook any evidence that might be said to count against me. I do not think I have done that up to this point; I have tried to meet everything.

Lord Russell. — That is the fact, is it, that at that time the nearest Spanish mission was a long way off — yes or no.

Mr Mallet-Prevost. — I do not know — a long way off — it was a long way off, as I take it, it was further off than the Curumu.

Lord Russell. — And the idea of the daily patrol is all nonsense?

Mr Mallet-Prevost. — I do not think it is, begging your Lordship's pardon. A daily patrol was an exaggeration, I dare say — that it came every day. I do not say it is to be taken literally but the representatives of Spain in that quarter were coming down that river and having control over it and watching the Dutch and driving out the Carib Indians from there.

Lord Russell. — The daily patrol was as far as the Great Falls.

Mr Mallet-Prevost. — They did come down there. At one time they arrested a man below the lowest falls. It is attempted to be pooh-poohed by the Attorney General but it is fact.

Lord Russell. — What I do not understand is (if it is important you can enlarge upon it) if you say the nearest mission was the Curumu, days away from the Great Fall, how could it be said there is a daily patrol?

Mr Mallet-Prevost. — I do not say it ought to be taken literally. I do not press that. I say during these years between the Post of 1758 and 1766 the Spaniards were constantly there they may not have come down to those falls at times for two or three months, but they were constantly down there and had the river under surveillance. What is most important is, the Dutch were *not* there and did not go there because they thought the Spaniards *were* there and believed the Spaniards were there.

At the bottom of page 214 E :

“ Up to this time not the least answer has been received from the Court of Madrid to the Memorial about Cuyuni presented by us to the States-General. In view of this, it is our intention to shortly present a further Memorial upon that subject to the States-General, with addition of what has happened since, and especially of the matter of the colonist I. Dudonjon. This further Memorial will probably now be of more influence and effect, because of the war with England. ”

It was not a matter they were expecting any favorable decision upon. They made the protests and could not do anything else and now there was going to be a war with England and they might take advantage of that. It was not a question of arbitration, as Lord Justice Collins suggested; it was just now they were not waiting upon that they made an appeal which was thrown into the waste paper basker and the answer made to it was to keep them out of possession.

At page 217 :

“ The Indians have also informed me that the Spaniards up in Cuyuni are engaged in building boats. What can all these things mean, my Lords? I fear that this may lead to the entire ruin of the colony (which God forbid) unless rigorous measures are taken. Our forbearance in the matter of Cuyuni makes them bolder and bolder. At the time of that occurrence the Caribs were full of courage and ready for all kinds of undertaking; now they are all driven away from there and have retired right up into Essequibo. ”

It shows how completely the Dutch had lost control. They never had control but how completely this evidence negatives any supposed control.

At page 221, between C and D, there is a statement of the Director General in 1763 :

“ But do your Lordships not think that we might, meanwhile, and without exercising the least violence, again take possession of the Post in Cuyuni, and place a subaltern officer there with ten or twelve men as a guard, against which I do not think the Spaniards would dare to undertake anything? I take the liberty of recommending this to your Lordships’ serious consideration as a matter of great importance both for the Honourable Company and for the Colony, several slaves having already run away in that direction, and the Colony lying open on that side to all Spanish undertakings. ”

That is what I stated was the first suggestion for the establishment of that post, five years after they had been ejected from the former one, and yet there was no slave revolt, no negro revolt.

At page 223 below E :

“ I have just received information that a mutiny has broken out upon the principal plantation in Canje, that two whites have been murdered, and that all the slaves have run away. Desertion in Berbices is getting very common, and matters are daily becoming more dangerous. My garrison is very weak, and the citizens not very willing. I fear that I shall have to go to Demerary earlier than I intended. ”

In the British Case, as I read this morning, page 49, it says they would have re-occupied it sooner had it not been that all their available energies were temporarily directed to the suppression of the negro revolt in Berbice.

Lord Russell. — It does not cover the whole ground, of course, but it is proper to say in that connection; it is put as 1763.

Mr Mallet-Prevost. — Yes; but certainly the statement of the British Case is not a fair statement of the facts at all.

Lord Russell. — I agree it is not a reason that covers the whole ground at all.

Mr Mallet-Prevost.. — At page 225, from the Company, at C :

“ You receive, however, by this ship twenty soldiers, the expense of which we will bear. Our intention is that, so long as the present danger lasts — ”

that is the revolt —

“ you employ them for increasing the garrison of Rio Demerary, or wherever you shall think they may be of use for the greater security of the Colony.

However, when the danger shall have entirely ceased, we should like you to employ ten or twelve of these men for manning the Post in Cuyuni; but it seems unadvisable to us to do it sooner, to avoid getting into hot water on two sides at the same time. ”

And I again point out that, apart from any legal rights, that is evidence of the fact that the Dutch were not in the Cuyuni at that time. Then at page 227 there is an enumeration of various posts by the Director General and just below B he refers to the Cuyuni :

“ The fourth, and last, is the still abandoned Post in Cuyuni, abandoned since the raids of the Spaniards, a Post of the very greatest importance, because the Spaniards, in order to get to this river, and the slaves in order to escape to them, have a free and open road, and also because the Spaniards have driven away the Caribs who lived there, and who could apprehend and bring back the runaways. ”

That does not require comment. Then page 228 :

“ It is certain, your Lordships, that this is not the time to think of the re-establishment of the Post in Cuyuni. That matter will give us plenty of work to do when, with the blessing of God, all is at rest and in peace, because, the Spaniards having driven all the Indians out of the river, it will be no small matter to get all the necessary buildings in readiness there. ”

Is not that proof that the Spaniards were there in control? How in the face of such evidence can it be asserted the Spaniards never were there and the Dutch always were.

I pass now to the 3 volume, page 104, the top of the page :

“ The Indians whom I had encouraged, and who had already undertaken two successful expeditions to Berbices, being encouraged by this, came to my house on the 19th December, to the number of fully 100, inquiring into the state of the Colony. I informed them, through the medium of Mr van der Heyde,

who understands their language thoroughly, both of the Governor's journey up the river and of the overland march of the detachment, at which they were very pleased, and, having been given a quantity of guns, powder, shot, and flints, they departed with a promise to set out for Berbices, and to keep a look-out for the fugitives in the forests and other places there. The Caribs, about whom mention is made above, have come back, bringing with them a large quantity of right hands from the rebels whom they killed, for which I paid them this morning, it being the custom in the Colonies to pay as much for a runaway's head or hand as for a slave. "

That was February, 1764, and that was the end of that revolt. The fact is more clearly shown even, on the opposite page, 105 opposite C :

" I have the honour to send you herewith the letters last received from Berbice, from which your Honours will see that affairs, God be praised, are beginning once more to take a tolerably satisfactory turn there, to which end our Caribs, both from these rivers and even from Barima, have loyally done their best and are yet doing it, constantly roving about between the two Colonies, and having, through the Lord's blessing, been so successful in all their expeditions as to have lost none of their own people, this makes them bold and beyond habit and expectation enterprising, and even reckless ; and these occurrences cause a great embitterment between the blacks and them, which, if well and reasonably stimulated, cannot fail to be of much use and service in the future to the Colonies. "

That fixes clearly the fact that by this time the revolt had been completely crushed. This was in the year 1764, and still two years passed before the re-establishment of the Dutch post in Cuyuni. And yet we have the same statement which I do not like to repeat from the British Case. At page 116 opposite F :

" I have received a report from the few colonists who still reside in the upper reaches of the rivers — "

I explained when we studied the history of Essequibo that that meant below the lowest falls —

" that a few weeks ago they had seen a white man with a few Indians proceeding down the falls of the River Cuyuni and proceeding up the River Massaruni. I reproached them very much for not apprehending and sending the man to the fort, and expressly charged them that if they caught sight of others they should immediately apprehend them and send them to me, which they promised to do.

There is something behind this, my Lords ; these are spies

who come and get all the information they can, and I fear that some trouble or other is brewing on the side of Cuyuni.

Whatever trouble I have taken, and whatever promises I have made, I have not been able to get any Indians up to the present to aid me in re-establishing the Post in Cuyuni, and without their help it cannot be done — ”

how completely dependent, Mr President, these Essequibo Dutch were on the help of these Indians. They are utterly weak by themselves —

“ because with slaves it is not only too costly but also too dangerous, so that I am in great difficulties with this work, and the re-establishment of that Post is, in my opinion, of the greatest necessity. ”

The question of power is to be considered in determining who had the right to these territories. These extracts are very significant.

At page 117 at the bottom of the page is another passage :

“ Thus, what with the French on the east and the Spaniards on the west, we are really like a little boat between two men-of-war.

I shall not attempt to give my masters advice in a matter which it is in no one's power to prevent or to circumvent. My only aim in this is to respectfully submit to your Lordships what is our humble opinion concerning this in all our Colonies situated on the mainland, and our well-grounded fears concerning the consequences.

I, for my part, see no remedy for this matter except by populating the Colony and establishing good Posts in the interior, from which a sharp and careful look-out can be kept upon all movements.

Because, I have already had the honour of informing your Lordships, that if anything be undertaken it will be done inland, and not on the sea-coast ; of this I am perfectly certain and I do not think that two years will elapse before we see something of the kind.

In this emergency I have again had a talk with Van der Heyde about Cuyuni. He has told me that the Indians were won over to be helpful, but that they wished in that case to be assured also of protection against the Spaniards. ”

That was the condition at Cuyuni and those were the reasons why the Dutch could not go there.

Then at page 121, opposite F, at the bottom of the page. This is from the Company in 1765 :

“ We fully approve the reprimand which you have given to those people who saw some Indians with a white man going in a boat down the River Cuyuni and up the Massaruni, and yet did

not arrest them and bring them to the fort; and likewise the recommendation and orders given by you in that connection, for foresight and precaution, as well as prudence, are necessary and useful.

We are perfectly at one with your Honour that the restoration of the Post in Cuyuni is of the highest necessity, and accordingly it was most acceptable to us to learn finally that Indians had been found to offer a helping hand, provided an assurance of protection against the Spaniards was given them, which it was easy to promise. ”

Of course, anything is easy to promise. Page 127, E ;

“ Having just concluded my despatch to your Lordships to be sent by this vessel, I received tidings by a second express from the upper part of this river that several Indians of the Spanish Missions which are above Cuyuni had sailed down that river, and had proceeded up the Massaruni under the leadership of an Indian [*sic*] officer, whereby the people living up there have been in a state of great uneasiness, and not without reason.

Thereupon I immediately sent off an order to H. Lussis, Director at Old Duynenburg, to summon the Honourable Company's creole, Tampoko, who is up there, and to charge him to get a few Caribs to go up the Massaruni with him to apprehend that Spanish officer, and to bring him to me.

Also to inquire most carefully whether a commencement had been made with the projected Mission between Cuyuni and Massaruni, of which I had the honour to write to your Lordships by the vessel “ De Spoor ; ” this being the same creole of whom I had spoken in my despatch by “ De Spoor ” as being a bold and fearless fellow, in whom I think I can trust,

And I have ordered Commandant Bakker to hold himself in readiness to start up the river with a detachment at a moment's notice in case that it should be found necessary.

I have communicated to Director van der Heyde your Lordship's orders concerning the Post in Cuyuni, which is getting more necessary every day, and a beginning will, God willing, be made in the matter immediately after the New Year.

Many conjectures, some ridiculous and all equally vain, are being made concerning the continual journeys to and fro of the Spanish Indians. The idea that seems to me most feasible is that they are doing this to win over the Indians of Massaruni, in order that they may not be disturbed by them in the establishment of their projected Mission. ”

Mr Justice Brewer. — Was that Spanish officer arrested or anything done?

Mr Mallet-Prevost. — Some Indians were arrested. It was not an officer. It was an Indian. He is called an Indian officer in one place and a Spanish officer in the other. They were Spanish Indians.

Lord Russell. — They came down the Cuyuni and then turned up the Massaruni and passed Kijkoveral?

Mr Mallet-Prevost. — That is what they did. It showed how abandoned it was at that time. There were only a few people living there. They came down to Kijkoveral.

Lord Russell. — Where was this supposed to be written from?

Mr Mallet-Prevost. — Flag island. Your Lordship will remember an extract I read where he speaks of the few colonists who still resided in the upper reaches of the river. He meant Kijkoveral.

Lord Russell. — You say this officer was arrested?

Mr Mallet-Prevost. — Yes; at the bottom of the page we have the record of that arrest :

“ The white man who had come down the River Cuyuni and sailed up the River Massaruni, as I reported in my last despatch, has got away — ”

he must have been a Spaniard. The white man who came with the Spanish Indians —

“ and has not been seen since, but having received news in time of the coming of the Spanish Indians and their Captain, as they call him (we say an Owl), your Lordship's creole Tampoko, having very carefully observed my orders, went after them immediately with a party of Indians, overtook and brought them here to me, and being again immediately sent out to go and find one of them, a very suspicious character, who, I had been informed, had gone overland to Pomeroon to buy boats, he came back to me very quickly with him.

“ Having closely interrogated the former, I found that they had come at the request of a Carib Owl of Massaruni, who, having an old grudge against the Acuway nation, had urged the others of his nation living under this jurisdiction to help him to fight the Acuways, which they had, however, refused to do, reminding him of my oft-repeated commands. He had then called these Spanish Indians to his assistance, but the Acuways, warned by the other Caribs, were on their guard, and ready to receive them well. ”

Now this is what the Dutch Governor did to these Indians :

“ I ordered the Spanish Indians to return to their homes immediately and not to come here again — ”

they had been arrested for coming down to Kijkoveral —

“ otherwise I would have them received in a disagreeable

manner, whereupon, being greatly terrified, they departed with the utmost haste. ”

If that is to be taken as an instance of any jurisdiction up the Cuyuni it is extraordinary.

Lord Russell. — Is there any evidence to show that Fort Kijkoveral was abandoned at this time?

Mr Mallet-Prevost. — I went through the evidence the other day showing it had been stripped and everything moved down to Flag island. In the year 1770, when Hartsinck wrote, he spoke of the hamlet.

Lord Russell. We are now in 1764.

Mr Mallet-Prevost. — It was in 1739 that the seat of Government was removed from Kijkoveral to Flag island.

Lord Russell. — I did not gather it was left without inhabitants.

Mr Mallet-Prevost. — I do not say there was not somebody there, but a few.

Lord Justice Collins. — Was not there a restaurant kept for the maintenance of the justices?

Mr Mallet-Prevost. — No that was in Flag island.

Lord Russell. — If there is any evidence about it I should like to be reminded of it.

Mr Mallet-Prevost. — I shall be glad to do it tomorrow. My notes are at home. Duynenburg is the plantation referred to there. There were two or three Dutchmen there but the whole thing was practically abandoned. Will your Lordship turn to this. I referred the other day to Chollet's map and though it is a later date things were practically in the same condition. I want to make this clear and shall be glad to answer your Lordship's question on that.

Lord Russell. — You have answered it quite sufficiently.

Mr Mallet-Prevost. — It was not abandoned in the sense they had given up their river, but there was not any garrison there or any Dutch authority there. There were a few planters up the river. When the officers moved down to Flag island, in 1739, there had been a little hamlet at the place now, I think, called Cartabo and that hamlet was spoken of by Hartsinck in the year 1770 as being entirely in ruins. But Hartsinck says that in 1740 it consisted of some 12 or 14 houses and that there were people there at that time when the seat of Government was stationed at Kijkoveral. The seat of Government was moved from there to Flag island because all the planters began to go down. These plantations began to be abandoned and finally those left, over the two about here so that Flag Island towards the end of the century, when the British went there, was a place where washerwomen put their clothes to dry, and even that was abandoned.

Lord Russell. — I was not asking about that. I was asking definitely about one thing. Was Kijkoveral abandoned or not? You have answered definitely as far as you can.

Chief Justice Fuller. — On page 116 C, he says it would serve no useful purpose to bring down the stones of Fort Kijkoveral because they were so heavy and it was very well built old Portuguese work :

“ That on an island in the aforesaid River of Essequibo there was established of old, just on the spot where the Rivers Cuyuni and Massaruni fall into the same, and therefore on a point of land more than twenty hours' march from the mouth of the aforesaid river, an old fort, called Kijkoveral on account of its position. ”

That was in the year 1764 and it could be referred to in that way as something historical. It was on that same page, opposite F, I read :

“ I have received a report from the few colonists who still reside in the upper reaches of the rivers. ”

Lord Russell. — It struck me because you said that meant the junction.

Mr Mallet-Prevost. — It did. Now the next extract to which I call attention is page 129, this same page upon which we are. I will call attention to the only two passages which there are in the whole evidence which can be interpreted as showing any intention on the part of the Dutch to use these posts for the purpose of territorial occupation and they are passages which are contradicted by everything that went before and everything that succeeded. I, therefore, want to read them :

“ According to the reports of the Spanish Indians, it is only too true that there is a desire to establish new Missions in Cuyuni and above Cuyuni, but now that a beginning was to be made on the 1st with re-establishing the Post, I hope that an end will be put to all these encroachments. I have already engaged a Postholder who is well acquainted with Indian languages, and as soon as some of the buildings are ready I will give him a commando of one under-officer and six men to begin with until it is well established ; but I have some trouble in finding six Protestant soldiers, it being of importance that no Roman Catholic, and especially no French, be sent there, because they are not to be trusted at all. ”

That is one of the passages from Gravesande to the Company and the other is from the Company to Gravesande and it is page 134 F :

“ But, as from his deposition and those of the other Indians, it seems we must deduce that the Spaniards really intend to establish new Missions in and across the Cuyuni, we believe that further delay in erecting the said Post is absolutely inadmissible, if we desire to see those encroachments gain no ground, but to effectively prevent them. ”

As I say, those are the only two passages in all the evidence which would seem to show that in establishing these posts they were intended by the Dutch to have any influence upon the action of the Spaniards and as I say they are contradicted by everything that went afterwards. There is a passage at page 135, from the Company, to which I desire to call attention, below E :

“The arrangements made by you to have the creole Tampoko live henceforth at the first fall in Cuyuni, in order the better to be able to keep a watchful eye upon all the movements of the Spaniards, have our fullest approval, and, if it should come to the worst, which, however, we would prefer not to see happen, we agree with you that it would be a great point to be able to rely upon the aid of the Caribs.”

That is something of a come-down from the proposition — the two letters I have just read — that they were going there to prevent the Spaniards from doing anything. There we have what they had in mind as practically possible, that is, to have an old creole down below the lowest falls to watch the Spaniards. That is the way this river was being occupied and controlled by the Dutch. He must have been far-sighted to watch the Spaniards, in the Spanish Missions, from the lowest falls. The post was established in 1766. I will only say a word as to its location. In speaking of the first post of 1754 and 1758 I stated that we were agreed as to the location of that post at Tokoropati. We were not agreed as to the location of the second site but we put it there (pointing). I do not know that our friends on the other side have any other point to suggest.

Now as to the two locations of the first post which existed from 1766 to 1767 we are agreed that its first location was somewhere below the second location of the first post. It is impossible to say where it was, but we know it was at some place below the second location of that 1758 post. We are agreed as to the exact location of the second site because that post of 1766 remained but a short time at its first site and then it came down to an island in the Tonoma rapids and that is the last point at which it was placed.

Mr Justice Brewer. — Waiving the question of change of situation there were only two posts as I understand.

Mr Mallet-Prevost. — Yes; that is most significant. The first post was furthest away; and I might point out with regard to that Tokoropati post, it passed only two or three series of rapids which I mention in regard to this river. There was one series of rapids beyond that which the post never passed. Every time after that, that a post was located, it was nearer. They retired from there and then were lower down. The Attorney General said it was for his health. It was for his health but I shall show it was for his health in a sense different from that in which

the Attorney General suggested. I will show that he came down and hid himself in an island because he was afraid of the Spaniards.

The President. — Did several posts exist at that time?

Mr Mallet-Prevost. — No; only one post; never more than one during the whole one hundred and sixty odd years from the Treaty of Münster to 1814. There was a post from 1755 to 1758; let me call that four years, at most and from 1766 to 1772, that is six years; one post for ten years in one hundred and sixty-six years. That is all as I shall show tomorrow, or this afternoon if I get so far. Then the Spanish Curumo fort was maintained there with a garrison from 1792 till at least 1809, at least 17 years continuously. Will the Tribunal kindly turn to page 136 where they will find the instructions given to the postholder of this new post of 1766. I want to call attention to the first three articles.

“ ARTICLE 1. — He shall take care that the free Indians are not molested or ill-treated, but endeavour as much as possible to attract them to and in the neighbourhood of the Post, and protect those residing in the neighbourhood in everything ”.

I have called attention, when the extracts allowed me to do so, to the fact that it was the Indians immediately above the post who were the very ones controlled by the Dutch. In the instructions given to the Pomeroon postholder he was told to attract Indians as much as possible to the post and protect them; here we have the same thing.

“ ARTICLE 2. — He shall keep a sharp look-out on the runaway slaves, apprehend them, and send them back. For this reason he shall not allow whites, mulattoes, or slaves to pass the Post without a permit, except in the event of whites pursuing runaway slaves; this being an urgent matter, he shall assist them, although they have no permit, but he shall make strict inquiries into their proceedings, note the same down, and forward report thereof to us ”.

Showing there was a distinct prohibition for persons from the Essequibo colony to go up that river except with a permit.

“ ARTICLE 3. — He shall pay particular attention to the actions of the neighbouring Spaniards ” —

he was to do that from this post —

“ take good care to give them no reason of complaint — ”

that is significant as rebutting any inference that might be drawn from the two letters I read. The postholder was to go there but give the Spaniards no reason of complaint —

“ also see that they do not surprise them, but keep a watchful eye on them, and not allow them on any pretext what-

ever to pass below the Post, but in case any should be coming direct here to send them to the fort. ”

That shows clearly the Dutch did not intend, when they put up this post, at most to exercise any control beyond its immediate site. The postholder was told if the Spaniards came as far as the post and wanted to go below he was to notify the Company below. That was the only outpost of the Company.

Lord Russell. — But apparently intended to be put on the route to Essequibo.

Mr Mallet-Prevost. — To prevent runaway slaves.

Lord Russell. — The object is one thing. I ask the fact.

Mr Mallet-Prevost. — I do not exactly understand your Lordship.

Lord Russell. — The post was intended to be put on the route of those coming from the west and northwest down the river to Kijkoveral or to Flag island or Essequibo?

Mr Mallet-Prevost. — Oh, certainly. No question about that.

Lord Russell. — It is a suggestion of control of those going along that route.

Mr Mallet-Prevost. — It is a control of those who wanted to come below, not of anything above that. As a matter of fact the post was stationed there. What was he to do? Not to do anything about there. The Spaniards could come there and do anything they pleased in that region but if they came below then he was to notify the Governor and, as I say, that shows conclusively that the post was an outside post and not intended to exercise any control beyond where it was put.

At page 138 is another letter to which I desire to call attention, opposite E. It is from Gravesande :

“ The Postholder of Cuyuni is, according to the latest reports, lying ill at the Post. This is a great pity, because he makes great progress in his work, and we should lose a great deal in him. But sickness is the fate which overtakes all, without exception, who proceed up the Cuyuni for the first time, especially in the dry season, which still continues. ”

Instead of putting some ten or twelve soldiers as they had said, they sent one man with two assistants, and I want to give the few references there are in the history of that post, and this is one of them.

Mr Justice Brewer. — Will it trouble you if I interpolate a question not along the line of your present thought. I do not know if it is necessary; it is provoked by the first part of that letter you were reading from — “ The postholder of Arinda is at present here ”, without quoting the dates. At some time you say the seat of Government was transferred from Kijkoveral down to Flag island. Whatever may have gone there, is it not true that about Kijkoveral or in that vicinity there remained up

to the time of the cession by Holland to Great Britain at least two plantations — up there in that vicinity of Kijkoveral.

Mr Mallet-Prevost. — Yes.

Mr Justice Brewer. — Was there ever any change in the occupation of this post at Arinda on the Essequibo above Kijkoveral? Was that disturbed? If that is not in the line of your present thought I do not want to disturb it.

Mr Mallet-Prevost. — Does your Honour mean was it disturbed by the Spaniards?

Mr Justice Brewer. — Was it abandoned or did it continue, as far as the evidence shows?

Mr Mallet-Prevost. — Will your Honour allow me to answer that question tomorrow? I want to answer it correctly, I shall give your Honour the answer to that in the morning or it may be this afternoon; I will look at my notes.

Now I think I had called attention to page 138; I do not think I had read it :

“ I have (so I have reason to believe) found a competent Postholder for Cuyuni in the person of Pierre Martin, formerly a corporal in the service of your Lordships. I have engaged him at the rate of 16 guilders per month, and have given him provisionally two assistants, who are well acquainted with the Indian languages, each to receive 8 guilders per month. I dare not trust any of the soldiers here to go there, for reasons already given in my former letters. He is at present engaged in putting up the dwellings and in bringing the Post into some order, and has some Caribs with him, whose number I shall greatly increase when sufficient bread has been planted and things are in a better state. ”

“ According to the report of these same Indians, the Spaniards have captured and carried off your Lordships' creole, Tampoko, together with an Indian slave belonging to my daughter, who had gone with him to buy birds and other things from the Indians up in Cuyuni; some of these Caribs even assert that the Indian slave has been killed. ”

We will see what difficulty the Governor had in maintaining this post or in getting any Indians to go there. He was somewhat sanguine before he made the attempt.

Now it will be recollected that this Tampoko the Creole that was here arrested was stationed at the very lowest falls to watch the Spaniards and the Spaniards carried him off. Then page 140 at B :

“ Herewith I will again reiterate my request that no French or Flemish be sent, but as many Protestants as possible. The proximity of the Spaniards, and especially of the Spanish Mis-

sions, renders it impossible to place the slightest trust in Catholics.

I have had the honour to report to your Lordships concerning Mr Rousselet's journey to Orinoco. I hope that the exploring and spying parties of Spaniards in Massaruni and Cuyuni will come to an end, and will be effectually stopped by the Post in Cuyuni. "

And I will simply read an extract now from the British Case itself to show the location of this post and that confirms what I have said, page 51 at the bottom of the page :

" In 1766 a post in Cuyuni was re-established. There is little doubt that the site of this post was lower down the river than that of the former post. The Dutch Governor did not himself go up to superintend the erection, and the description of the work done upon it certainly is that of a new clearing in a new place. If it had been in the old place the Director-General would probably have referred to the fact.

After trying a site on the banks of the river, the Postholder in 1769 moved the Post to an island between two falls which he called Toenamoeto, and from the way in which the Director-General speaks of the change, it is probable that the Postholder had come nearer the settled districts, for Storm van's Gravesande states that he would have liked to move the Post gradually higher up the river. Toenamoeto is at the rapid of Tonoma, where tradition says there was a Dutch Post, the site of which Schomburgk marks on his maps. "

The history of the Post while it was at its first site from December 1766 to May 1769, two and a half years, was just as the history of the previous eight years had been, a history of constant alarms and fears of Spanish attack. I will point to a few of the extracts that support that statement. In volume III page 142 F; this is a letter from Gravesande in the year 1767 :

" I am anxious to have some tidings from Cuyuni, because I received a note from Director van der Heyde yesterday in which he informs me that the creole, Tampoko, had been to see his son at Old Duynenburg — "

Tampoko had escaped from the Spaniards —

" and had reported that he had heard from a few Indians that a party of Indians had been sent by the Spanish Mission to make a raid upon the Post, and had completely sacked it, and that he was going to find out how true that was. That Post is a terrible eyesore to the Spaniards, and there is no doubt that it stands in the way of their attaining some important aims. As

soon as I have reliable tidings I shall deliberate with the Court what is to be done in the matter. ”

Lord Russell. — That was not true, it was a false rumour.

Mr Mallet-Prevost. — No; all of this evidence has been dismissed by the Attorney General saying it is not true. It is true there is nothing to support the Attorney General's denial.

Lord Russell. — There was an attack.

Mr Mallet-Prevost. — I beg your Lordship's pardon I did not understand the point you referred to; I thought you meant the coming of the Spanish Indians from time to time. No; this rumoured attack was not true. No attack was made, there may have been a rumour and probably was, and there may have been some foundation for the rumour, but the Post was not attacked.

Mr Justice Brewer. — Your point is the Post at that place was considered an eye-sore to the Spaniards.

Mr Mallet-Prevost. — Yes. At page 143 is the first evidence of the failure of the Dutch plan with regard to this Post, at F:

“ At the same time I received a report from the Post in Cuyuni that the Indians are being bribed and incited to such a degree that they are unwilling to do the least thing for the Postholder, and that when he orders them to go alongside the passing boats to see whether there are any runaways in them, they obstinately refuse to do so, and when he threatens to shoot upon them they reply that they have bows and arrows with which to answer. ”

The Tribunal will remember that the Caribs had all been driven out of this river and that in re-establishing a post the Director General said he was going to man it with Indians. These are the Indians he was able to get there. They are only a few and they are absolutely insubordinate and had a contempt for Dutch authority.

At page 150 between C and D; this is from the West India Company in the year 1767 :

“ You have done very prudently in ordering that nothing be undertaken against the Spanish Mission in Cuyuni, but that a watchful eye be kept upon all the actions of the Spaniards, for so small a beginning may often give cause for reprisals of a much more serious nature. We likewise approve of the hint which you caused to be given in your name to the Caribs, namely, that they must not molest the Acuways subject to the Company, which warning we trust has been effective. In the meantime, we heartily hope that the rumours in regard to that Post, communicated to us by your letter of the 23rd March, may have been found untrue, inasmuch as we consider that Post as of great concern

to us, for which reason we also must seriously recommend to you its preservation. ”

And I want to call attention to the fact that both Gravesande and the Company at this time regarded this Post, as they had been regarding the location all through these years, as a very important matter, and a matter which was to be preserved if possible, and we shall see what the result was.

At page 152 E; this was another rumour :

“ There is a rumour here that the Post in Cuyuni has again been raided. I do not know whether it is true, because I have as yet had no direct tidings from above. The old negro Abarina, who always looks after the turtle business up in Cuyuni, and who is well acquainted with all the roads there, went up stream yesterday to get information. ”

This again was groundless in so far as there was no actual attack upon the post, but all these rumours show the nearness of the Spaniards and the fact that the Postholder was feeling their presence. He felt it in such a way shortly that he moved the Post.

At page 158 D :

“ Moreover, you well know, or should know, that there are, a considerable number of roads for the runaways which the barques cannot close, and how long the road through Cuyuni has been open, as a result of the attack of the Spaniards and the destruction of the Post there, in which river there are no longer any Indians, and the new Postholder can hardly maintain himself — ”

that was one year after the Post was established, the Dutch Governor unable to send any soldiers there, he was going to send Indians, and could not get them.

Lord Russell. — How does that read?

“ The new Postholder can hardly maintain himself, through Pomeroon, over-land, and many more. ”

Mr Mallet-Prevost. — It is mixed though I think the meaning is —

“ Moreover, you well know, or should know, that there are a considerable number of roads for runaways which the barques cannot close. ”

He means a great many roads for the runaways. It is a very bad sentence.

“ And how long the road through Cuyuni has been open, as the result of the attack. ”

The part that is pertinent is perfectly clear. He gives a picture of that Post which he and the Company regarded as of great importance; they were going to man it with soldiers, and could not let the soldiers go for

fear of desertion, and they were going to man it with Indians and could not get the Indians to go there, and the Postholder could hardly manage to maintain himself there. ”

Then at page 160 we have this from the Zeeland Chamber :

“ But we have digressed in order to say that we have declared in our despatch of the 21st September, already many times quoted, that we were fully persuaded of the necessity of strengthening both the Post on Cuyuni and that at Maroco, and that we heartily wish that your Honour may have found means to frustrate the undertakings of the Spaniards, ”

again evidence of the importance that was attributed to this Post.

At page 161 F is a further statement by Gravesande :

“ In addition to this all the Indians have declared that they will have no French at the Posts, a troop of more than 100 Warouwans, all well armed, having already arrived at the Post, Maroco saying that they came to see whether there was a Frenchman there, and intending to kill him if it were so. ”

It is a wonderful commentary upon the supposed control over these Indians that 100 Indians came to the Post intending to kill the Postholder if they do not like him :

“ Wherefore also Pierre Martin has come down the river from Cuyuni, the Indians flatly refusing to come and live anywhere near the Post so long as he is there. They will have a Dutchman, they say. ”

The Indians dictating to the Dutch what officers the Dutch should appoint. At page 164 is a letter from Gravesande dated in 1768. I will read from just above B.

“ I had the honour to inform your Lordships in my last of the discharge of the scoundrel Bakker.

Having also been obliged to remove Pierre Martin, the Postholder of Cuyuni (because the Indians will on no account have a Frenchman there) as well as the one in Maroco, I have no one there now but the two assistants. It now remains to be seen whether the Indians of Maykouny, whither Pierre Martin has gone, will exhibit the same feelings — ”

and so on.

“ I fear very much that it will be so. ”

It gives us the condition of the Cuyuni Post at that time, two assistants, one of the three men had left. We will see how long the others remained. Between E and F we have this statement :

“ In Cuyuni it is now quiet so long as it lasts; I wish I had a competent Postholder for that River. ”

Now I pass to the fourth volume, and I read from the first page just above C :

“ The Assistant Gerrit van Leuwen has reported to me concerning the Post in Cuyuni that he had heard from the fugitive Indians that a detachment of Spaniards had come to just above the Post, and had captured and taken away a whole party of Indians; that they had threatened to come again during the next dry season and proceed as far as Masseroeny to capture a party of Caribs there, and that they would then sail down the Masseroeny and again up the Cuyuni and visit the Post on their way. I immediately sent him back again (after having provided him with gunpowder and other things), and charged him to use the oars as much as possible, and to find out through the medium of the Indians the time about which they would commence their expedition and to inform me of the same, when, in order that they may have a fitting reception, I will send a Commando to Mr van der Heyden upon Old Duynenburg (with whom I have already spoken on the matter and arranged what measures are to be taken), past which plantation they must go. ”

Mr President, here is the Dutch Governor in 1769; when he receives a rumour of a proposed Spanish attack what does he do. He is preparing to meet them at the mouth of the Cuyuni, at Old Duynenburg plantation, which lay partly in Cuyuni and partly in Massaruni.

Lord Russell. — Do you mean with sandwiches and refreshment?

Mr Mallet-Prevost. — No, something of a different kind. I suppose his desire was instead of offering sandwiches to make hash out of them. It is remarkable I cannot help calling attention to the fact that in this year 1769 we see the demolition of the Dutch in Cuyuni. The British Case at page 82 makes this statement :

“ In 1769 the Dutch were also settled very high up the Cuyuni, close to the mouth of the Curumo. ”

That is a serious allegation made in this case and supposed to set forth facts upon which the title of Dutch occupation is based. Such references as that (and I will deal with them when I take the story from the Spanish side) are based on such things as I stated yesterday. There were slave-traders there, and it is noteworthy and a fact to which I desire to call attention now that if there were Dutch slave traders in that region and they continued there for some years they were finally driven out by Spain. It is more likely they were Surinam traders and from other parts. Gravesande is ignorant of any Dutchmen there; he had given a prohibition, practically, to anybody to go up above that Post; the Postholder was ordered not to let them go there, and all those allegations about settlements up there are founded on such evidence as I

read yesterday in connection with the slave trade and nothing else.

Lord Russell. — The authority cited for that statement is oddly enough the letter of the Prefect of the Capuchin missions.

Mr Mallet-Prevost. — Precisely; it is Spanish evidence. I will take it together. The whole refers to slave traders.

Lord Justice Collins. — Is a slave trader incapable of occupying a house or living in a country?

Mr Mallet-Prevost. — Not if he goes with the authority of his country and has rights; but if an individual trader goes scouring the country anywhere and everywhere and his movements and habitations are not related to territorial rights, then I say nothing can be derived from it. If it can be shown a slave trader went to the mouth of the Curumu with the authority of his Government and with the intention of making it part of the territory, then being a slave trader has nothing to do with the case of what constitutes occupation; but if an individual trader without authority of his Government, against the prohibition of the Dutch Governor to settle in that part, goes to the Curumu and stays there I do not care if for one year or 50, it can give no title.

Mr Justice Brewer. — I regret to say in the early history of my country a great many from pious New England went to Africa and established shelters there from which they took negroes. I do not suppose that it constituted any taking of territory there.

Lord Russell. — If there had been any advantage in it no doubt it would have formed the foundation for a claim.

(Adjourned for a short time.)

Mr Mallet-Prevost. — The last passages to which I referred before the adjournment related to the year 1769; one of them showing that the Dutch Governor in connection with an expected Spanish attack was prepared to receive the Spaniards, not even at the Dutch post a little way above the mouth of the river, but down at the plantation Duynenberg; and the other alleging that in that year the Dutch were far up the Cuyuni.

I desire now to call attention to another passage in a letter of Gravesande in that year 1769 on the 3rd page of the 4th Volume of the Appendix to the British Case. I read opposite E :

“ I have just received a report from Mr van der Heyde that our runaways have taken the road to Cuyuni and are therefore lost. The Caribs have reported to that gentleman that the Spaniards have established a Mission not far above the Post in that river, and yet another in a creek a little higher up, flowing into the Cuyuni both of which have been strongly manned. ”

Again I do not point to that passage as evidence of the fact that any Spanish mission was located in that year just above the Dutch post, but it is a most important passage as again throwing light upon what Gravesande regarded to be the fact. This post had been put there for the

purpose of preventing any further Spanish encroachments and here almost as soon as put there, within three years, the rumour comes that, a Spanish mission is being located in the Cuyuni River just above that point. We will see what was done. Naturally it would seem that, if this Post had been put there for the purpose of preventing this, some action would have been taken; and this is what Gravesande says :

“ It is finished now, my Lords; neither Postholders nor Posts are of any use now. The slaves can now proceed at their ease to the Missions without fear of being pursued, and we shall in a short time have entirely lost possession of the River Cuyuni.

Must we allow all this to go on before our eyes? The natural result of this must infallibly be that the River Essequibo will gradually be ruined and abandoned. If we had shown our teeth when, contrary to the law of nations, they attacked and destroyed the Post in Cuyuni, and when we had the power in our hands, it would never have gone so far as this, but all action was then forbidden me. The proverb says “ Whoever turns himself into a lamb will be eaten by the wolf. ”

This was ten years after that so-called remonstrance of 1759. Nothing had been done; Spain and Holland were living peaceably; they did not break off diplomatic relations; no effort was made to compel Spain to take some action in this matter; the Dutch were acquiescing in their being kept out from the Cuyuni and here was a mission established above in the teeth of the Dutch, and the Dutch Governor throws up his hands in despair and had nothing else to do.

Now from page 4, C, I read another passage from Gravesande in the year 1769 :

“ In my second letter by the “ Vrouw Anna ”, I had the honour to give your Lordships a hasty account of the dangerous position of the River Cuyuni; since then I have given express commands that one of the two assistants there should proceed up the river as far as possible, or as far as he could go without any danger; that he should make a very careful inspection of the situation of the Spanish Missions, and that he should get the Indians to procure him an exact account of their strength and further particulars. If possible, he was to bring down one or more of the Indians living at those Missions, and I also gave orders that they should be well on their guard at the Post against surprise parties (which, according to all appearances, will very probably be undertaken before long), and that they were to come and report to me as speedily as possible. ”

The next passage is at the bottom of that page in the same letter :

“ But this is certain, that the road for the runaways is now quite open and free, it being impossible for the Post in

Cuyuni to stop them, there being a number of inland paths; nor can we be warned in any way by Indians, there being no more of these in that river. They did begin to settle there again when the Post was re-established, but the raid made by the Spaniards last year, when a large party of Indians were captured and taken away, has filled the rest with terror, and they are gradually drawing off. ”

That attack must have been a fact. This is the evidence and nothing to contradict it.

Lord Russell. — Is there any evidence of that elsewhere? It is an odd thing that that raid is not referred to anywhere else.

Mr Mallet-Prevost. — Not necessarily, my Lord. If it was a raid made by Spanish Indians from the missions I do not think it is at all unnatural. We have here the evidence of it. It is a raid on the Indians.

Now I want to call attention to this in the first place from the passage which I read just above, which is that the post, if it had been ever intended to stop the establishment of Spanish missions and encroachments there, was a failure. That was not the only object. Another and most important object was to prevent runaways and we have this fact that that post was a failure and the reason is very clear.

The post was at that time at *that* point. Gravesande in this letter which I have read speaks of a number of other paths, paths that came down here from the Pomeroon where the Indians could run away in *that* direction, cross this ridge and strike the Cuyuni at a place higher up and so run away. So they could cross the Waini and Barima and reach the Cuyuni and continue their journey. What was the natural thing for the Governor to have done? Why to move the post further up. If it was put for the purpose of intercepting those runaways, if it was where it was, it failed to serve that purpose, and the natural thing would have been to move it higher up the river. But nothing of the kind was done. Those avenues of exit have been opened, the post was useless for the purpose for which it was established, as is clear from the letter I read from the bottom of page 4 and the top of page 5. On the top of page 6 we have a statement to the same effect showing the mastery of the Spanish in that quarter. I read from opposite B :

“ In my previous despatches I had the honour from time to time to inform your Honours of the secret doings of the Spaniards and especially in my second letter by the “ *Vrouw Anna* ” and in my letter by the “ *Geertruida Christiana*, ” did write circumstantially concerning the fatal and, for the Colony, most highly-perilous news of the River Cuyuni. My opinion has always been that they would gradually acquire a foothold in Cuyuni, and try to obtain the mastery of the river, as they now practically have done at the end of the past year. ”

That is the evidence of the Dutch Governor, the very man that, according to the allegations of our friends on the other side, was in full occupation and control of the Cuyuni River.

Now in view of these facts what follows is not surprising; and I call the attention of the Tribunal to letter E, page 15.

Lord Russell. — The next passage shows how he regarded all that they were doing.

Mr Mallet-Prevost. — I do not say he did not regard it as a high-handed matter, my Lord, but I am dealing with the facts, as to who had control and who had occupation. Of course, he continued to regard this as a high-handed matter. By the way, the phrase about the high-handed manner refers to what they were doing along the coast, not only in the interior, and the way the Spanish were pushing the Dutch. At page 15 we have a letter from the Cuyuni postholder to Gravesande and this is what he says :

“ This is to inform your Excellency that I have heard from a Carib that the Caribs of the Masijoen were coming down with this tide to carry off the Caribs of Cuyuni to the Masijoen and were also coming to the Post to kill me and Gerrit van Leuwen ; ”

those were the two assistants that remained there after Pierre Martin had been removed ;

“ they will come down in large numbers according to what I heard from the Indian. It is my intention, your Excellency, to remove the Post to the Island Toenamoeto, lying between two falls, and on that island the Post will be better and healthier, and I have already commenced to make a clearing there. Herewith I beg to request your Excellency for the goods which I have laid out for the Honourable West India Company — ”

and so on. He was going to remove for his health and as I pointed out this morning it was a very healthy thing for him to do because he was expecting a Spanish attack and he went in fear of the Spaniards. The Attorney General said when he moved it didn't matter where the post was and it was simply a fact of its being a healthier location. I agree in the fact of it being a healthier location but we will see what is meant by that presently.

The next letter is from Commandant Backer, Fort Zeelandia, to the Director-General, Essequibo, May 7th 1769 :

“ Yesterday evening Bont received a letter from Mr Van der Heyde, in which that gentleman informs him that the Indians up there havetold him that the Post in Cuyuni had been attacked by the Spaniards; that Jan Wittinge had been killed, and Van Leewen carried off. Mr van der Heyde at the same time states that he is doing his best every day to hire Indians to send up

the river in order to see whether this is true, but has up to the present not been able to persuade any Indians to go. ”

That was the condition of affairs :

“ If this be true it is insufferable, and it is too bad (pardon the simile) that a cat should allow itself to be eaten up by a small mouse. If we only had the soldiers we would make them pay for it well. I shall not dwell upon this further, and shall try to obtain full information concerning it. ”

Then we have Gravesande's report of this matter to the Company (which is on the preceding page) these being enclosures in it :

“ Yesterday I received a letter per express from Commandant Backer, which I take the liberty of inclosing.

“ In this your Lordships will find the report from Mr van der Heyde concerning Cuyuni. If the news be true (which I can scarcely believe), then things are going badly, and there remains no other alternative but to adopt measures of violence or reprisal. ”

Gravesande might have added another word there, *submission*, because that is what followed :

“ Violence, reprisal or *submission*. ”

From that time on there was absolute acquiescence in this ejection of the Dutch from Cuyuni. Gravesande took no steps to order the postholder to go back or to go up stream, but we find later that the Company write to him on the subject and his answer.

Mr Justice Brewer. — The post was not disturbed till 1772?

Mr Mallet-Prevost. No; I shall follow the evidence on that point. In Gravesande's next letter to the Company the matter of the Cuyuni is passed by; there is no mention of it, and it would seem from this time on, and the references will bear me out, that Gravesande was beginning to lose interest in the Cuyuni. He had done his best and it amounted to nothing, and from this time on the post finally sank until it was abandoned.

Then comes the remonstrance of 1769, at page 29 of this volume, and portions of this refer to the interior.

Lord Russell. — Intermediately is a report of the Prefect.

Mr Mallet-Prevost. — Yes; but I don't take any of the Spanish documents now, my Lord. I want to take them by themselves. I am now taking them from the Dutch side and then I will take the ones from the Spanish side but any question your Lordship would like to ask I will answer to the best of my ability.

Lord Russell. — No; do not bother but it seems to me that the natural thing to do would be to take them in order of date.

Mr Mallet-Prevost. — I do not think that that would make the matter clear, my Lord, and I think your Lordship will see when you come to

look at the Spanish documents that they have a connection among themselves and that they have a meaning which would not be clear if interspersed with other documents.

This is the remonstrance :

“ Read to the Assembly the Remonstrance of the Representative of his Serene Highness the Prince of Orange and Nassau, and Directors of the Chartered West India Company in the Presidial Chamber of Zeeland, on behalf of the Company in general, as having the particular direction and care of the Colony of Essequibo, and of the rivers which belong to it, declaring that they, the remonstrants, had in this capacity from time almost immemorial been in possession not only of the aforesaid River Essequibo and of several rivers and creeks which flow into the sea along the coast, but also of all branches and streams which fall into the same River Essequibo, and more particularly of the most northerly arm of the same river, called the Cuyuni; that from time immemorial also on the banks of the same River Cuyuni, which is considered as a domain of the State, there had been established a so-called Post. ”

Mr President, may I stop there for one moment to recall this fact, that the post to which reference is here made was established in the year 1755, and was attacked in 1758 and was the only post, and yet the Company in referring to it say :

“ From time immemorial also on the banks of the same river Cuyuni which is considered as a domain of the State, there had been established a so-called post consisting of a wooden lodge, which, on behalf of the Company, like several others in this Colony, is occupied and guarded by a Postholder and outrunner or assistant, with some slaves and Indians.

That, accordingly, the remonstrants, especially after what had happened in 1759, had been extremely surprised to learn by a letter from Laurens Storm van's Gravesande, Director-general of the Colony of Essequibo, written the 9th February last, that a Spanish detachment coming from the Orinoco had come above that Post and had carried off several Indians, threatening to return at the first following dry season and visit Masseroeny, another arm of the Essequibo, lying between that and the Cuyuni River, and, therefore, also unquestionably forming part of the territory of the Republic, in order also to carry off from thence a body of Caribs (an Indian nation allies of the Dutch and under their jurisdiction), and then to descend the River Masseroeny, ascend the Cuyuni and visit the Company's said Post in Cuyuni, as their High Mightinesses could see from an extract of the said letter, annexed as Addendum (A), contain-

ing also a report of the provisional measures which the aforesaid Director-General had taken thereagainst.

That they, the remonstrants, had taken all that as a mere threat, which, as on many other occasions, would have no effect, and this, although the Director General aforesaid had also informed them, by a letter of the 21st February, 1769, of which they produced an extract (Addendum B), of the establishment of two Spanish Missions, occupied by a strong force, one not far above the Company's said Post in Cuyuni (apparently, however, on Spanish territory), and the other a little higher up on a creek which flows into the aforesaid Cuyuni River. "

There is the distinct admission, in this remonstrance by the Dutch, that a part of this Cuyuni River at least belonged to Spain. They believed at that time what Gravesande had told them. The Spanish had established a mission above Cuyuni and it is the location of that mission which they say is Spanish territory. This is no mere statement by a Dutchman nor even by the Dutch Governor nor even by the Company; it is the statement of the sovereign of the nation. It is the Netherlands themselves that are presenting this protest to Spain and they make this distinct declaration and it is the last declaration that we have from them on the subject of boundary. I shall later on show what was done with that remonstrance. For the present I call attention to a letter from Gravesande at page 45. The Company had written to Gravesande about the moving of this postholder further down the river and this is what Gravesande has to say about it, at page 45, a year after the post had been moved down :

" The letter from the Assistant Van Wittinge is so far satisfactory that there does not seem to be any danger at hand yet for the Post; this, however, does not detract from the fact that the establishment of the Missions of Cuyuni is a very serious matter. I charged this man to proceed up the river with all possible caution, and to make an ocular inspection as well as he could, and to collect reports from the nations up above. Up to the present this has not been done; but what shall I say, my Lords, he is a creole. "

Will the Tribunal remember that this order to the Postholder to go up the river and do this very thing had been given a year before and here is the Dutch Governor referring to it in 1770 and he says this man has not yet gone up the river. That shows the sort of control that the Dutch Governor was exercising. He could not get the men to go up there. Then comes Gravesande's expression of opinion :

" He ought not to have removed the Post without my permission, but fear often leads us into mistakes. He is once there, and is much better protected against surprises, but the position

is not in accordance with my wishes, because for very good reasons I would have liked to move the Post gradually higher up the river."

I do not know that language can express more completely than this does the utter defeat of the Dutch in this effort of theirs to get a foot-hold in the Cuyuni above the falls.

At page 76 is a letter in the same year from the Postholder who had moved the post down and there are only a few references now to this post; we shall soon get to the end of this history. I read from opposite D :

" This is to inform your Excellency that I am sending down with Gerrit van Leeuwen a female slave with her child belonging to Diderik Neelis, the Postholder of Maroco, and who were taken from him by the Spaniards, and also some free Indians who were also living in Maroco, who have run away from the priest. I understand from these same Indians that there are more coming on behind, but that in the bush they got separated from each other. I hope that they may come to light, and then I do not know how they will come home, because I have no boat and people to send them down, because the greater part of the Caribs have departed from Cuyuni — "

that was the effect of the Spanish control in that river. That is in the year 1770 —

" to Masseroeny to make dwelling places there and some have gone to upper Siepanamen to live there; "

and then comes this request of Van Wittingen at the very end :

" I must ask your Excellency for my discharge. I shall serve until New Year; my time is up then. Further nothing to say. "

Lord Russell. — This is the man reported murdered some years before.

Mr Mallet-Prevost. — Yes; there were several reports but what he did was to move himself further down and hide himself in the Island at Tonoma and he is so much disgusted with his experience that he now asks for his discharge.

The rest of the evidence as to this is very brief and it will be found in the 7th volume of the Appendix to the British Case at page 177 below E. This is an extract from some of the account books showing the salaries and wages paid to the various post-holders and this is a statement as to the Cuyuni post. It will be noted that in 1767 Pierre Martin, a postholder — that is the last time he appears — was the postholder who was removed. He was a Frenchman and the Indians objected to a Frenchman and Gravesande had to remove him and he was sent to Mahaikony. He

appears on the pay-rolls in 1768 and 1769 and it was probably in 1769 that he was removed.

Now he left two assistants; one of them was Jan Van Wittingen, there in 1768, 1769, 1770 and in 1771 he died at his post. He asked for his release but he died there. Gerrit Van Leeuwen was there one year less, according to this record, though there is another record in the muster rolls which would seem to indicate that he was there in the year 1771, but I should think that these pay-rolls were more to be relied upon than the muster-rolls. At page 168 is the muster-roll for the year 1771, and it will be noticed that in that year Van Leeuwen does still appear, and Wittingen and other byliers are there.

Lord Russell. — What is the latest date?

Mr Mallet-Prevost. — I am going to point out that there is none for the years 1772 or 1773; there is one for the year 1774 and that will be found on page 168, opposite B, where Leeuwen does not appear. There is no muster-roll for the year 1772 or 1773 but for the year 1774 there is. It is opposite D and it is dated May 3, 1774. In that the Tribunal will see there is no postholder in Cuyuni. There is one in Arinda and so it goes on for a number of years. The rolls are there; we have them from 1774 to 1786 running from page 169 to page 175, but the Cuyuni post is not again mentioned and then we have some further records from page 176 to page 178 which bring us down to 1796 and no mention of the Cuyuni post.

Chief Justice Fuller. — That is the Cuyuni Post.

Mr Mallet-Prevost. — 1771 is the very last mention of anyone at that post, and in that year the man died there. That is the last that we have here of it, and from that time on the Cuyuni and the whole interior of those Rivers Cuyuni and Massaruni was practically abandoned, just as I pointed out in connection with the history of the Essequibo.

The only references in the testimony which would indicate an intention on the part of Company to keep those is a statement at page 107 of the 4th volume of the Appendix to the British Case (but it is not necessary to turn to it) at letter F, and also on page 108 at letter B, where there is some proposition as to a list of officers and servants for the Company, and one Postholder in the Cuyuni was mentioned; but that was merely a proposition and not a fact. Then we have Heneman's plan of proposed garrisons in the year 1775, which also proposes to place in the Cuyuni Post, I do not remember how many exactly, but I think some 6 or 7 soldiers. But of course nothing was done under that whatever, and finally as late as the year 1785 we have this simple statement in the 5th volume of the Appendix to the British Case, page 31, letter A :

“ The Court would suggest to his Excellency's consideration whether it would not be best to place this Arnoldus Dyk at the old Post in Cuyuni, which is at present still without a Postholder. ”

Lord Russell. — What is the date of that?

Mr Mallet-Prevost. — That is in the year 1785. It is still abandoned. I do not want to trespass upon the next period which will be dealt with by Mr Soley, that is to say the British period, but I cannot resist the temptation, Mr President, in this connection to ask the Tribunal to look at one map, the map of 1838, which is No. 79 in the Venezuelan atlas. It is the next link which we have as to the whole interior; for years and years, nothing is heard of it, either for the years that come prior to the British occupation or in the early years of the British occupation. Here is a map of Hadfield's in the year 1838. It is a map of British Guiana from the last surveys of Schomburgk, Owen, Hilhouse, and others. It is a publication which was reproduced in Parliamentary Papers in 1839. Will the Tribunal see what is stated opposite to "Cuyuni"? In the first place, it is shown only by dotted lines, and then there is this statement: "The Cuyuni and a considerable portion of the Massaruni are as yet unexplored". That is the next thing that we hear of those rivers. Yet in the face of these facts, it is stated that all these rivers had been in the continuous occupation and control of the Dutch and of the British; and here as late as the year 1838 we have this statement.

It does seem to me, Mr President, in view of this utter abandonment of that Post and of that whole region by the Dutch for so many years, from the year 1772 until the year 1814, that is to say for 42 years before the British came there, that that conduct could be taken as an acquiescence in their ejection from the Cuyuni and the Massaruni. They never pressed again the question of that remonstrance of 1769. They continued in perfectly peaceable and good relations with Spain. Nothing more was said about the matter, and when the Treaty of Aranjuez came to be negotiated towards the end of the century about the running away of slaves, not a word was said about that. That connection with the Treaty of Aranjuez will be more apparent if I do not now anticipate matters too much; but let me refer now briefly to the history of that remonstrance in 1769. I can dispose of it very shortly. In the 3rd volume of the Appendix to the Venezuelan Case at page 381, there is this —

Lord Russell. — This map that you referred to of Hadfield in the year 1838 is to scale? It is a regular survey as far as it goes, is not it?

Mr Mallet-Prevost. — I think very likely that is so, at least as to a part of the map. It is made upon the authority which is here cited, of Schomburgk, Owen, Hilhouse, and others. I suppose like all maps really, except the maps which are made from an actual survey of some small part of the ground, it is a compilation. That is what nearly all maps are.

Lord Russell. — Yes.

Mr Mallet-Prevost. — In the third volume of the Appendix to the Venezuelan Case at page 381, we have the first statement which was

ever made by the Spanish Secretary of State in answer to this Remonstrance of 1769. I will read from about the middle of the paragraph of document No 649 :

“ It is necessary for me to ask information from the Governors of the new village of Guayana and of Cumana concerning the facts which are reported, and to forward the said memorial to the Council of the Indies, in order that His Majesty may be informed of the extension of those boundaries and about the right claimed by the Republic to the fishery at the entrance to the River Orinoco — ”

that remonstrance it will be remembered related to both of these subjects —

“ a thing as new to me as that the Carib tribe of Indians is conceived of as the ally of the Dutch and *leur appartenant en quelque sorte*. To this end I delay returning to Your Excellency the said extract and copy. May God keep your Excellency many years. ”

It is well to see at once how the Spanish regarded these pretensions of the Dutch. Any control over the Caribs is something new to them.

Lord Russell. — The Spaniards are described here by this Secretary of State, — I suppose he is reciting it from some communication, — as the Spaniards established in the Orinoco.

Mr Mallet-Prevost. — Yes; as contradistinguished from the Dutch in the Essequibo.

Lord Russell. — Yes.

Mr Mallet-Prevost. — The next document is one to which I shall simply refer without reading it. It is in the fourth volume of the Appendix to the British Case at page 38, between D and F, and it is the letter of the Dutch Ambassador at Madrid to the States General, in which he says that the Spanish King, His Majesty, had commanded it to be placed in the hands of Señor d'Arriaga, Secretary of State for the Department of India and the Navy, and then his Excellency said that he knew nothing of the matter, and that he would send the said document to the Council of the Indies, in order to take their advice thereon. The next that we hear of this is in the year 1774, five years later, in the second volume of the Venezuelan Case Appendix at page 428, and I will simply state what that says without troubling the Tribunal to turn to it. The Secretary of State informs the Dutch Minister or rather recalls to the mind of the Dutch Minister the fact that in order to carry out the Royal order of the 10th of September, 1769, that is an order to investigate into the facts, he requested from the Secretary of the Universal Department of the Indies, as well as from the Council, all the documents and antecedents to be found in connection with the subject.

That was in answer to a request by the Dutch Ambassador for something. They waited for five years and got nothing, and the Minister says :

“ Oh ! we have referred that, ”

and the Dutch Ambassador has to be satisfied. He cannot do anything else, and in the same year 1774, in that 2nd volume of the Venezuelan Case at pages 428 and 429, we have practically the same statement, showing that the whole matter had been referred, by the Attorney General to whom it had at first been submitted, to what is called a Relator.

Lord Russell. — Yes, that is a very remarkable series of dates.

Mr Mallet-Prevost. — Yes; very, my Lord. They treat the whole thing with utter contempt.

Lord Russell. — The Council say it ought to be referred to the Attorney General; the Attorney General says he has too much to do.

Mr Mallet-Prevost. — Yes.

Lord Russell. — Then the Counsel to whom it is referred takes about five years to prepare a statement. It then comes back to the Attorney General, who keeps it another four years or five years, and when he is pressed for his opinion, he says :

“ Well, the story is now so old, and as the Dutch have done nothing, I do not think that I need be troubled to go into the matter at all. ”

Mr Mallet-Prevost. — Your Lordship has just stated the whole thing in a nut-shell. I am not going to take up the time of the Tribunal by reading this thing. I am only going to give the references to it, but the whole thing went on until the year 1775.

Mr Justice Brewer. — He was not anticipating that he was increasing our difficulties today, though !

Mr Mallet-Prevost. — I do not think that it is calculated to increase them very much. It shows the utter contempt with which the whole thing was treated. It is said by our friends that there was no answer to this Remonstrance. Why, actions speak louder than words. The answer is that the Spaniards continued right there and kept the Dutch out.

Lord Russell. — I regard the explanation as being, that Attorney-Generals then were, as Attorney-Generals since then have been, probably strong supporters of the Fabian policy.

Chief Justice Fuller. — He says there was such a mass of papers to go through.

Mr Mallet-Prevost. — First the matter was referred to the Attorney General and the Attorney General referred it to a Relator, and the Relator referred it to somebody else and then the matter was brought before the

Council in the year 1775 and the whole thing was dismissed with contempt.

Mr Justice Brewer. — As being too old ?

Mr Mallet-Prevost. — Not only as being too old, but they said the Dutch had not done anything in the meantime to press it, and that they had abandoned it. That is exactly what happened.

Mr Justice Brewer. — I do not want to pass by this matter which follows the quotation which you made from page 381 of the third volume of your Appendix. On page 382 and 383 there is a statement of some statistics, which however do not quite meet the exact dates referred to by you. It gives the villages of Spaniards and of mixed population as in the year 1766.

Mr Mallet-Prevost. — Yes.

Mr Justice Brewer. — It gives the villages of Spaniards, next the population, then the villages of Indians of the Catalan Capuchin missions. Then, in the year 1773, the villages of Spaniards and of mixed population and villages of Indians of the Catalan Capuchin missions, giving the inhabitants, the houses, the farms, and the cattle, all prepared I should think under the direction of Centurion. It throws some light as to the condition of this province of Guayana in those years, according to Spanish report, it does not ?

Mr Mallet-Prevost. — Yes, Mr Justice Brewer. It speaks of 30 000 head of cattle. I shall deal with that matter when I come to the Spanish story. It is perfectly remarkable evidence of the prosperity of those missions at this time. This was only the beginning of it.

Mr Justice Brewer. — It is not the beginning of them ; it is 1773.

Mr Mallet-Prevost. — Well, I say it is a beginning. They went up towards the end of the century. When the British came to take possession of Essequibo, there were over 20 000 head of cattle in these missions, and they had grown from year to year. It was in a most prosperous condition.

Lord Russell. — You do not take a population by simply taking an admission as to the head of cattle in a place ?

Mr Mallet-Prevost. — No ; but Mr Justice Brewer was calling attention to the 30 000 head of cattle, and I shall show that the heads of the inhabitants grew correspondingly. Why, the prosperity of the Spanish at that time was simply remarkable, and it is expressly in that view of these facts (and there is nothing to contradict them) that it is possible for our friends to come here and magnify the great Dutch power and say that the Spaniards amounted to nothing, and that they must have this territory because the Spaniards had no power to take it up and that they had ; and that, if they had tested the power, they could have driven the Dutch from the Essequibo itself.

Lord Russell. — Will you indicate, as this point has been mentioned, the site of what may be called the Spanish village nearest to the territory in dispute in this enumeration of the villages ?

Mr Mallet-Prevost. — In the year 1766 ?

Lord Russell. — Yes, on page 382. I just want to follow it up because Mr Justice Brewer called your attention to this.

Mr Mallet-Prevost. — Certainly, my Lord. I have a list of the Missions in order of date here.

Lord Russell. — No; I mean look at the lists on pages 382 and 383, which do you say is the nearest?

Mr Mallet-Prevost. — I am going to do my best to answer your Lordship's question.

Lord Russell. — I can find nothing nearer than Tumeremo.

Mr Mallet-Prevost. — Tumeremo was on the out-skirts of the Mission savannahs.

Lord Russell. — And Tumeremo is not enumerated here.

Mr Mallet-Prevost. — In 1766?

Lord Russell. — If it entails any trouble upon you, Mr Mallet-Prevost, do not answer that question now.

Mr Mallet-Prevost. — I do not know that I can give you a picture of those Missions at that date —

Lord Russell. — My question was not that. Here is an enumeration of Spanish villages and of populations. My question was, which of those villages was nearest to the territory now in dispute?

Mr Mallet-Prevost. — I will answer that question in one moment, my Lord. They were all in territory in dispute or most of them were, because the extreme claim of Great Britain was to that savannah.

Lord Russell. — That is true, taking the extreme claim. I agree to that.

Mr Mallet-Prevost. — There was here, I think, prior to 1767, Cumamo.

Lord Russell. — Whereabouts is that?

Mr Mallet-Prevost. — I will just read a few in order of date.

Lord Russell. — Perhaps, as you will be answering another question of Mr Justice Brewer's tomorrow, it will be convenient to delay answering that until then also.

Mr Mallet-Prevost. — I can give the extreme Mission at any year, only that it requires a moment's study to select from those that have been established before that year exactly which one was the easternmost.

Mr Justice Brewer. — Please do not disturb the line of your argument.

Mr Mallet-Prevost. — Then I will take up that by and by. As a matter of fact, for a great many years and through most of this period, and I am perfectly frank about it, Tumeremo was the most eastern one. Cura and Mutanamabo lasted only a short time. They were destroyed, and so also was the Mission here on the Cuyuni destroyed, and until the latter part of the century while the Spaniards were all through this region, as the evidence which I have read today shows, there were no established missions further east than those two.

Lord Russell. — As far as I can make out the most eastern one was the one at Tumeremo.

Mr Mallet-Prevost. — Now, Mr President, of course I do not want to lose sight of this which will come in later and which I shall discuss fully later on. It is significant, but as I pointed out, I think it was yesterday, when we come to what were the resources of the Dutch on the one hand, and what were the resources of the Spanish on the other hand, then, for the moment, we must wipe out the disputed territory. It is a question of what was the strength of the power here and what was the strength of the power there, and when we calculate the strength of the Dutch power we take in the Essequibo and we take in Demerara, and when we take the power of the Spanish we are not limited by the lines of the Orinoco. As a matter of fact, most of the province of Guiana was south of the Orinoco: I think indeed the whole of it,

Lord Justice Collins. — I think that the Spanish troops distributed throughout this territory in the year 1766 were only 18.

Mr Mallet-Prevost. — In the different missions, yes, but they did not take account of the garrisons at Santo Thomé my Lord, — not at all. Your Lordship asked me for some information on that point and I shall give it to your Lordship tomorrow. I do not propose to read these extracts which the Lord Chief Justice of England has so admirably summarized, but I want to give the references to them. I think the last one which I gave was in the 2nd volume of the Venezuelan Case at pages 428 and 429. Then comes the Report of the Fiscal as to the complaints made by the Dutch Minister in the year 1774, which will be found in the second volume of the Venezuelan Case at page 429. Then there is the resolution of the States General in the year 1775, urging some answer to this matter, in the 4th volume of the Appendix to the British Case at page 132, from C to D. Then there is a statement of the West India Company of the Amsterdam Chamber in the year 1776 to the same effect, in the 4th volume of the Appendix to the British Case at page 141 at B. And again in the year 1776, showing how utterly fruitless all their attempts had been is a statement by the West India Company in the 4th volume of the Appendix to the British Case at page 160 from D to F. Then there is a statement in the year 1780 by the King of Spain in connection with the order that he gave Inciarte which has relation to the reply which he was to give in case he was molested; that is in the 4th volume of the Appendix to the British Case at page 141, opposite C. The Report of the Spanish Council of State on the Dutch remonstrance in the year 1785 will be found in the 5th volume of the Appendix to the British Case at page 33, opposite F, to page 34, opposite B. Finally the second volume of the Venezuelan Case Appendix, at page 379 and page 380, contains a record of the Council of the Indies in the matter.

There is one important point which I wish to emphasize in this connection, Mr President, and which would have been brought out if I had read all these extracts. But I will ask the Tribunal to accept my state-

ment for that and ask them to verify it subsequently, if they should so desire to do, and that is that as years went on and as communications were sent from one to the other, little by little, the territorial question disappeared from view and it came to be a question as to what should be done to prevent the running away of slaves. Every time that the matter was referred to after the lapse of a few years, it was the slaves and the running away of the slaves from the Essequibo and from the Orinoco that was the crying trouble on the part of the Dutch. And, as I say, the territorial part of it appears to have little by little been put on one side and finally to have been lost sight of completely and that whole thing culminated in the Cartel or Treaty of Aranjuez towards the last part of the century, I think in 1791 or 1792, which Treaty covered this whole point; that is to say, there was some arrangement made as to the return of runaway slaves from Essequibo and that was the result of all this diplomatic negotiation. So that it was not really a mere silent acquiescence on the part of the Dutch but it was rather a turning of their complaint a way from the territorial point to the runaway slaves, and a final adjustment of that question leaving the other completely out of view. It was an absolute abandonment of everything that they had put forward in that Remonstrance in 1769, — absolutely. I think that that is the significance which the Treaty of Aranjuez has in this case.

Lord Russell. — Do you intend to refer to that Treaty later?

Mr Mallet-Prevost. — There is nothing else to be said about it, my Lord.

Lord Russell. — Very well. Where is it to be found?

Mr Mallet-Prevost. — At page 36 of the third volume of the Appendix to the Venezuelan Case and the date of it is June the 23rd, 1791.

Mr Justice Brewer. — It is nothing but a Cartel?

Mr Mallet-Prevost. — Nothing; but it is most significant in view of the fact that it is the culmination of all this diplomatic talk and it shows the complete abandonment of all the other matters.

I come now, Mr President, to the consideration of the Spanish evidence to which I have referred a number of times today. Our friends on the other side, finding no support whatever in the Dutch records to sustain their allegations as to the existence of Dutch settlements in this region have had recourse to the Spanish documents, and in order to understand those references and to give them their true value and effect, it is necessary to study them somewhat comprehensively. They are in a certain sense a history of the Spanish missions and the whole history culminates so far as the period which I am considering is concerned in the establishment of a Spanish fort on the south side of the Cuyuni opposite the mouth of the Curumu, and it will be found that from beginning to end that this is a connected story, that it is a story in which Spain was attempting to subdue the Caribs. The Caribs were the scourge of the country far and wide, far east of the Essequibo, far west of

the Orinoco, throughout this whole region from the very earliest times. The story of Spanish dealings with those Caribs, Mr President, is a story which shows that they were driven first from one point, then from another, then from another, and finally as regards this particular territory that they were driven from the rivers of Cuyuni and Massaruni, and that the Spanish fort on the Curumu was placed there for the purpose of keeping them out and for the purpose of controlling this whole region. I say it is a connected story and that the references which that story, in those documents, contains to Dutch settlements and to Dutch residents are every one of them references to Dutchmen who were in and about that whole region and hundreds of miles up the Orinoco seeking for slaves, oftentimes going there disguised for the very purpose of evading Spanish authority — never going there, as I stated this morning, for the purpose of settling, never going there for the purpose of acquiring any Dutch territorial rights, never going there with the authority of the Dutch Government for the purpose of making any settlement.

I have shown on more than one occasion how there was a distinct prohibition as to settlement, a prohibition along the coast, a prohibition that was made by the Dutch Governor, and that was approved by the Court of Policy, that was confirmed by the Home Company, that no one should settle in that Barima region. In the same way, from the statements of the Dutchmen who were arrested in that Post in the year 1758, it appears that no Dutchmen were allowed to go beyond there and we have the instructions to the Postholder, in the year 1766, that no one was to pass his Post without a permit. The Dutchmen who went through this region were not only Dutchmen, as I pointed out more than once, I mean they were not only slave traders from Essequibo, but they were quite as much from Surinam. The English were there, the French were there, all nationalities who had to do with that region were there, and there was absolutely no question of territorial rights in connection with this slave trade, — absolutely none. The Caribs themselves were no respecters of persons. It is stated that the Caribs were Dutch subjects and through those Caribs some title is attempted to be derived. Why, Mr President, in the first place in answer to that I say that the Caribs did not inhabit any particular localities and even if they had been the subjects of the Essequibo Dutch, it is impossible to say to what territory they could have given a right, assuming that any right could have been derived through savages. But in the second place, Mr President, those Caribs had no exclusive relations with the Essequibo Dutch. They did not distinguish between the Essequibo Dutch and the Surinam Dutch and the Berbice Dutch, and any other Dutchmen. They could distinguish between a Frenchman and a Dutchman, but they could not distinguish between these different Dutchmen each one of whom represented a different title and a different right. There were a great many of these Caribs who were settled in those Spanish missions. A great many of those missions were Carib missions, and

many of the Caribs that were used by the Dutch were Caribs which they took from those very missions.

The Caribs were induced by them to revolt from the Spaniards, It is not necessary for me to remind this Tribunal of the way that the Caribs aided the Spaniards themselves; of how in that very expedition of the year 1758, when they came down the Cuyuni river to oust the Dutch from the Post, that it was the Caribs who helped the Spaniards and who served as guides, who made suggestions to the Spanish Commandeur, as to how he should attack that Post, and that they went back peacefully with him and settled in the Spanish villages. That is the way that Spaniards dealt with those Caribs. They drove out those that they could not subdue, and the rest of them they made Spanish citizens of, and established them in the missions and civilized them.

I want now to refer to some rather early documents, I am not going into very ancient history and I am not going to make this story a long one. I am going to finish tomorrow, but I want to show from some early documents that this was a question that went very far back and that the Caribs were the scourge of the whole region and were recognized as such throughout these centuries. Will the Tribunal kindly turn to the first volume of the Appendix to the British Case at page 198? This is a statement by a Spaniard, Don Sancho Fernandez de Angulo, in the year 1686, and I read the paragraph beginning above the letter E :

“ From the above statement the consequences may be perceived which will follow to the service of God and His Majesty from the dislodgment and ejection of the Carib Indians from those lands (especially from the districts of the Vegas and mouths of the River Guarapiche) — ”

the tribunal will remember that the River Guarapiche is north of the Orinoco and the Vegas also —

“ and the evils which will result if they remain therein. For, in addition to the reasons upon which I rely, it is not of less weight that (as I hear) they sell to the French like merchandize the Indians they capture, for having tasted this devilish profit, the very Indians of the Missions will no longer be safe from them, nor will any one else in the country. And in order to fulfil their ambition and that of the French, they will make joint incursions with the latter, and it is to be feared will proceed to occupy the territories and ports of His Majesty as they have done in other parts, and as the Dutch have also done with some settlements on the River Orinoco in the region of the mainland. And passing on to consider the effect of taking the Carib Indians from there and transporting them to other parts, it seems to me that not only should the Council allow and approve the execution thereof with vigour and force of arms,

but should encourage it by orders and by giving countenance and reward — ”

and so on ; showing that at this very early date, namely the year 1686, it was not the French, it was not Dutch, it was not any other nationality that the Spaniards were attempting to fight, it was the Caribs. It was the Caribs that made these inroads with the French and with the Dutch and also with the others.

There is one earlier document I would like to call attention to at page 155 of this same volume. It emphasizes not only what I have said as to their being a scourge everywhere but also the fact that when it was the Dutch that were connected with the Caribs they exercised a secret influence over them inciting them to these slave raids ; not coming out as the Spaniards did and saying,

“ We did this because we are sovereigns there ”,

but doing it secretly and surreptitiously. I will read from above D.

Lord Justice Collins. — I thought the Spanish expedition was described as a secret expedition in these documents.

Mr Mallet-Prevost. — The one of 1758 was undoubtedly, my Lord. I thought I pointed out yesterday that the secrecy of it was in its execution, and that the reason it was secret was because when a policeman is going to arrest a criminal he does not send a man on ahead to notify the criminal of the fact. But there was not secrecy afterwards and Gravesande, when he complained, got his answer that what was done was done because it was Spanish territory and that answer was affirmed by the Spanish authorities. There was no secrecy about that. There was nothing secret about the Post till it was compelled to be moved down. The Spaniards were acting as sovereigns there.

Mr Justice Brewer. — There is nothing as yet about the slave trade.

Mr Mallet-Prevost. — No ; but I want to show what the Spaniards did.

“ It happened that while I was in the Island of Trinidad recovering from a grave attack of fever which I had contracted in this city of Guayana that I was obliged to leave it. Whilst some vessels from this said city were going to that of Barinas by the river, the Carib Indians of the Caura, servants appropriated to residents of this city — ”

I point out that these Caribs were at times servants, and good loyal Spanish servants ; at times they revolted, and at times they were distinct enemies ; it mentions other Indians also —

“ and other nations, revolted in general, killed all the people that were among them, more than thirty persons, including residents of the city and strangers. The cause of this rebellion

and havoc was the incitement which the Dutch of these new settlements have produced, through the secret communication they hold with them. ”

That is what I want to point to; there was no fair dealing; the Dutch never imagined that their relations with these Caribs were relations which were going to result in a Dutch title. They wanted slaves and they incited the Caribs to this thing, that thing, and the other :

“ I having had information of what happened in the Island of Trinidad, came to this city where I am taking the necessary measures for the punishment of these Indians. For which object I have sent to request help in men from the Governors of Venezuela, Cumaná and Barinas, ”

and so on, and he refers, lower down, to the Dutch inciting the Indians.

Now I want to read these passages for another reason. The impression has been created by what has been said by the Attorney General that right up to the end of the 18th century the Spanish Missions were being driven back by a Dutch power and it was against Dutch encroachment in that savannah region that the Spaniards were defending themselves. It was nothing of the kind. From beginning to end, and I want to tell this story truthfully, when the missions were attacked it was by the Caribs. Of course they were incited to it by the Dutch from Essequibo, by the Dutch from Surinam, or by anybody who wanted slaves; but it was war between the Spaniards and the Caribs, not between the Spaniards and the Dutch. It was against Carib attacks that these Missions had to contend and not against Dutch encroachment in that quarter. Hence it is, at that very early date, that I point to the fact that the fight was with the Caribs and not with the Frenchmen who accompanied them or with the Dutch who incited them.

Chief Justice Fuller. — The Caribs were in the habit of attacking without being incited by anybody.

Mr Mallet-Prevost. — Yes; they were cannibals, and if we can make any statement from what we know of what was found when America was discovered, and this region first was occupied, the Caribs were the scourge of that country. They were cannibals and their occupation was war and when the Dutch came and other nations, advantage was taken of the natural habits of these Indians who were ready to serve anybody and who never thought they were giving up their rights as tribes to anybody. They were not tribes really because they were little bands travelling from one region to another and never living for any length of time in any specified locality.

Another document I desire to refer to is in the third volume of the Appendix to the British Case at page 11, a statement made by Diguja in 1762, but the statement that I am going to read has reference to the year 1720 and is in line with what I have been showing :

“ The said residents and their successors were enabled, with almost incredible perseverance, to maintain themselves in that exile and solitude up to the year 1720, and it was due to them that foreigners could not take possession of the Orinoco, because although the resistance] which they could have made was not very great, it was sufficient not to allow strangers to dislodge them from their position, which was strong and respectable in the eyes of enemies. ”

And that is affirmed by the history of this thing they were always strong enough to maintain themselves;

“ But as the number of inhabitants was so small, the castle so dilapidated, and its artillery so inferior, they could not prevent the foreigners from passing to and fro in front of the castle; and they did so freely, by night and by day, accompanied by the Caribs, with whom they overran the neglected Provinces of Cumaná, Barcelona, and Carácas, and navigating the Orinoco, went up to those of Barinas and Santa Fé. They plundered and burnt the Mission villages which were established in them, and the Dutch, chiefly, bought from the Caribs and carried away all the Indians they could, for the establishment and cultivation of the plantations in their Colonies of Essequibo, Berbice, Surinam, and Corentin. ”

Will the Tribunal kindly glance at the map and see Bogota; it was as far as that that these raiders went. There was no thought of territorial rights and it was not confined to this establishment. Everybody went up there, French, Dutch and so on.

Then there is another statement by Diguja which relates to the year 1720 and I read from below E, page 5 :

“ The Government of Cumaná, at whose head Don Joseph Carreño was placed in 1720, consisted of the province of that name and the Province of New Barcelona. In both a large portion of the territory north of the ridge of mountains which runs from east to west across the two provinces was unknown. The land situated on the south of the same ridge was possessed and inhabited by the Caribs and other Indians not yet pacified, and by the Dutch, English, and French who were in their company. ”

Of course that refers to those slave raiders.

Now I have pointed to the fact that these Caribs were the scourge of the country. It was not the English, French, or Dutch, it was the Caribs.

Now I want to show how Spain dealt with this most serious question and that will be found at page 6 of this same volume, above E, where we have this statement by Diguja referring to the year 1748 :

“ In order to explore the unknown lands of the Province of Barcelona, and to pursue the Caribs and the foreigners who accompanied them, some movements towards the interior were started by the missionaries, supported by the small escort which Governor Tornera could give them; by these they succeeded in exploring the banks of the Orinoco and the Cary Rivers, and drawing many Indians from the forests, with whom the mission of San Buenaventura or La Margarita was established, and a larger number of Indians were collected to found those of Santa Rosa and San Joachin. (See the General Map as to the location of these three villages.) This was reported to His Majesty, under date of the 8th January, 1724, by Governor Don Juan de la Tornera, who urged, as a matter of great importance for the Royal service, that the Angostura of the Orinoco should be fortified, and that the said clergy should found in its neighbourhood one or more missions. ”

That was the year in which, from first to last, Spain dealt with this question. She sent her missionaries into these regions, she established missions, she drew into those missions the Indians of the forest that she could subdue and civilize and she used those missions for the purpose finally of driving the Caribs away and that is the effect those missions finally had. That was a victory that was not won in a day. It took a century to do it, but the Spaniards were finally victorious and these missions, that Diguja speaks of, were established far in the heart of this place and that was their purpose. The idea in the Spanish mind was not to establish these missions for the purpose of ejecting the English or the Dutch, it was for the purpose of dealing with a specific question and that specific question was the Indian question, the Carib question. The English, French, and Dutch were secondary; they were mere individuals that incited at times these Caribs, but the main enemies were the Caribs themselves.

The President. — These missions were also a political institution were they not?

Mr Mallet-Prevost. — There is no question about that. I do not know if I pointed out yesterday that these missions when they were formally founded were provided with church regalia and other various appurtenances by the Government. There was a formal founding of a mission when it was finally recognized as licensed by Spanish authority. It is curious but many of these missions existed for several years before they were founded and that is the reason why sometimes we have missions spoken of by name several years before their formal foundation. It is amusing to find that mission A was founded in the year 1750 and yet it existed in the year 1748. Things like that happen over and over again. But they were Government agencies.

Lord Russell. — Like most human actions I suppose they were proba-

bly set on foot with double motive, from one point of view unquestionably with a political idea and equally undoubtedly from the other a religious. I think historians have supposed it came from the zeal of the missionaries themselves.

Mr Mallet-Prevost. — I should be the last to contradict what your Lordship has said.

Lord Russell — I thought you rather treated them as entirely religious.

Mr Mallet-Prevost. — No, my Lord.

Lord Justice Collins. — I suppose the initiative came from the missionaries and the Government utilized them.

Mr Mallet-Prevost. — They were made use of by Spain for the purpose and existed through all these centuries and the Papal Bull when it divided these territories between Spain and Portugal placed as one of the duties on those two powers that they should christianize those lands. Do not let us lose sight of the fact that the church was a state church. It is not like missions sent out by a church with no connection with the State. It was a State proceeding, from beginning to end. The missionaries were representative not only of the church but magistrates as well and soldiers were stationed there, in the year 1766 I think, I do not quite recall the date, which as Lord Justice Collins pointed out were scattered among these missions for the purposes of police. They were there as representative of the Spanish military and they were there under the direction of the missionaries themselves. The Governor from time to time visited those missions and inspected them and made reports to the home Government and the prefects of the missions made reports to the King.

Mr Justice Brewer. — On the report of the prefect that expedition which resulted in destroying the first Post took place.

Mr Mallet-Prevost. — Yes.

The President. — Did I understand you correctly that there were missions which had been founded without any authority of the Government quite independently?

Mr Mallet-Prevost. — No. There were a few missions, Mr President, — I do not know whether I ought to say a few, it may be there were many that were started but that never came to anything. Every mission that was started was founded, and the ones that were an exception are these missions placed *here* which were started and destroyed before anything could be done; also the missions of Wenamu, Queribura and Mawakken. With those exceptions all those on the map appear on the list of missions that were founded and everyone existing under Government authority.

Chief Justice Fuller. — What was the date when the Spanish crown divided the Jesuit Fathers and the Catalanian Fathers?

Mr Mallet-Prevost. — I think 1730.

Lord Russell. — Or was it not 1720?

Mr Mallet-Prevost. — I think at that time there was a division of territory. That again goes to show how these missionaries were regarded as instruments of the Government, because the territory was assigned some to the Jesuits, some to the Catalonian Capuchins and others to the Aragonese Capuchins, showing they were there for the purposes of the Government — for certain purposes — and I show by reference to these early documents that, from the very beginning they were not only religious agencies, but were also used for the purpose of grappling with this question.

Now there is another point in connection with these missions that ought not to be lost sight of. It is said the Spaniards established Missions in the Cuyuni savannahs and never came down into this region and never established any mission south of the Cuyuni or east of Curumo. It does seem to me to take that view of the extent and influence of the natural working of these missions is to take a narrow view. These missionaries went out into the regions *beyond*, as one of these documents expresses it. They were “nurseries” for the missionaries. They went out and sometimes they were absent for a few months and sometimes for a year and they established places like these at Wenamu and so on. Sometimes they fortified it and at times they got the Indians to accompany them and at other times they forced them to. I remember the Attorney General using the word that the fishing was good — that men were brought in and that it was good fishing — we have brought 146 souls into the Mission. Is no account to be taken of that in dealing with this territory? Are we to suppose that the only activity of the Spaniards in this region was limited by the walls of the Missions themselves? It is impossible.

The President. — Then you give a great importance to this?

Mr Mallet-Prevost. — A very great importance, Mr President.

Now let me point out that it is not only admitted but agreed by our friends on the other side that these Missions do represent political agencies. You put that very question to the Attorney General and he admitted it is the fact and it is not denied and those missions have as much influence in this region as if every one was a Spanish fort. Indeed I think they have more value, because if they were Spanish forts they would have been manned by Spaniards sent from Spain or Spanish colonies, but here they were drawn from the country round and made the country round tributary to them.

Mr Justice Brewer. — There is no question that these lists do not mean simply Spanish inhabitants; they mean the Indians.

Mr Mallet-Prevost. — Certainly, the whole population.

Lord Russell. — Yes; men, women and children.

Mr Mallet-Prevost. — The dealings of the Spaniards with the Indians, as we know from the history of America, is a very different sort of dealing from the dealings, unfortunately, that we have had with them. We, in North America, have exterminated them.

Mr Justice Brewer. — Not quite.

Mr Mallet-Prevost. — Well, very nearly. We have driven them from the territory and Indians are not American citizens. On the other hand, the Spaniard came to the New World and made of the Indian a Spanish citizen. In this connection I shall have occasion to read the testimony of Gravesande and of Schomburgk himself who testified to the influence that those Spanish Missions had upon the Indians.

They made civilized citizens of them. I read from page 7 of volume III near the top of the page. This is another statement by Diguja relating to the year 1727, in line with what I have been saying :

“ And by another Royal Order, issued at Madrid, on the same date by the said Secretary, Don Joseph Patiño, which can be found from folio 10 to folio 11, it appears that the said Governor Tornera had reported to His Majesty, in November 1727, the number of Indians who had been reduced and settled through the assistance he had given for that purpose during his term of government, and also that the Caribs and other savage tribes had waged deadly war against the missionaries and the Spaniards who were with them. ”

Again emphasizing the fact, that from beginning to end, this was a war between Spain and the Caribs. There is an extract in the British Counter Case Appendix, in the year 1737, to which I desire to call attention, page 170. This is about the middle of the page between C and D. It is a phrase :

“ For since the Caribs have come up armed with fire-arms and accompanied by the Dutch, the smallest number (by accurate reckoning) they destroy in the year, counting those they kill and those they sell, exceeds 2,000 souls in Orinoco alone. ”

This thing was not being carried on in Dutch territory, it was in Orinoco, confessedly Spanish, and 2,000 a year were being killed for this purpose.

Mr Justice Brewer. — Those they kill and those they sell?

Mr Mallet-Prevost. — Yes. There is another reference in that same document (unfortunately I cannot give the reference) if I may read what I have — it is cut directly from the appendix, I thought it was at page 173, it evidently is not*. —

The President. — You can give it tomorrow.

Mr Mallet-Prevost. —

“ No. 13. The pirogues hitherto placed in the Orinoco have been lent by private persons, and manned by persons who have gone at the request of the Governor, most of them without pay, leaving their families in want at home, so that they withdraw themselves in a few days, and the Caribs gather together

* B. C. App. III, 90 C, D, F and 91 A.

again and renew their bold attempts. But the informant is not speaking of such pirogues as these, but of two armed pirogues provided by your Majesty with regular pay, and the proper men, such as can be found in Cumaná and Guayana, to serve as gunners and rowers, well provided with provisions and, always on the river, having their head-quarters in Guayana, at the port of San Francisco de Assis, which is the fortress. The informant says that this is the only means of freeing the Orinoco from Caribs and foreigners; but while a superior force to that which has been already tried is not provided, not even the Royal fort of Araya, the best stronghold in the Indies, is secure; but as he is not speaking of the aforesaid temporary vessels, they cannot be cited in the matter.

No. 14. The expedition of Arredondo not only drove the Caribs from the Orinoco, but he also remained in the ships with Father Gumilla and a small force, and sent them inland, and they explored the ground for several leagues. It is certain that this detachment, falling short of ammunition, and being attacked by Caribs under cover of the forest, found themselves hard pressed; but Arredondo having sent them a reinforcement of twelve men, commanded by Don Felix de Lei, they returned to the vessels, in which were Arredondo and the informant, with the loss of only one man. In all the years that the informant spent in Cumaná and Guayana there has not been a single instance, even to the date of this Report, of the Caribs having dared to attack or come near any vessels well armed with swivel-guns and ammunition, properly manned by from twenty-five to thirty men, and free to move quickly and give chase. The most they have ever done is to disembark and defend themselves under cover of the forests on the banks, and though many of their vessels pass in the river, they never attack on the water. The informant says that the two vessels of greater strength would prevent the Caribs from occupying the river and communicating with strangers, and finding themselves molested, they would evacuate the land as they did fifteen or twenty years ago in the Province of Cumaná, and would leave the other Indian nations free to form settlements as they did before. "

This was one of the passages cited by the Attorney General to prove a Dutch control of this river; that the Spaniards were taking measures for their protection at Santo Thomé itself. Its meaning is perfectly clear when it comes in line with the suggestion I have made. It is the Caribs they are fighting who are coming up and down that river and it is the Caribs that must be subdued and driven out and we have this important statement as to what was accomplished by means of the missions and driving out of the Caribs. We have this statement that they were

driven out, as they were from Cumana, and as we go on we shall see that they were driven out from this territory. The next citation (I fortunately have the reference to it) is in the third volume of the Appendix to the British Case page 84. This is a statement by Gumilla :

“ Sire, the harvest is great, the soil of many pagan nations well-disposed and fertile for the reception of the Holy Gospel, and the labourers (though few) would produce much fruit if the enemy of souls did not avail himself of the avarice of the Dutch, and the bloodthirsty and inhuman character of the Caribs, to destroy in a day the apostolic labour of a whole year. Both nations come up from the sea to rob and burn the villages of the Missions and carry off as many captives as they can, and sell them at Essequibo, Berbice, and Surinam, colonies of the afore-said Republic established (not on the Orinoco), but a good distance to the east of its mouths. ”

And then lower down

“ To procure these some Dutch introduce themselves among the fleets of these Indians, painted according to the custom of the said savages. ”

Is that action one that can give rise to any Dutch title, Mr President? The Dutchmen go there painted, as Indians, for the purpose of getting their slaves, for their Colonies.

Mr Justice Brewer. — I do not see that quotation.

Lord Russell. — I think it is the first time we have heard of this.

Mr Mallet-Prevost. — I will give your Lordship a number of references.

“ To procure these some Dutch introduce themselves among the fleets of these Indians, painted according to the custom of the said savages, by which they encourage them, and add boldness to the lamentable destruction which they work. Added to which, many Caribs receive a great supply of arms, ammunition, glass beads, and other trifles, with the understanding that they are to be paid for within a certain time with Indians, which they must take prisoners on the Orinoco. And when the time has elapsed, the Dutch creditors encourage and even oblige the Caribs to their bloody raids against the defenceless Indians of the Orinoco. From this root sprang the first and second ruin of the Missions which the Jesuits established with great labour and trouble in the years 1684 and 1693, when the Reverend Fathers Ignacio Fiñol, Ignacio Teobas, Gaspar Bek, and Vicente Loverso gloriously shed their blood in defence of their sheep, as did also Tiburcio de Medina, the Captain of the guard, leaving the settlements each time sacked and burnt.

But coming to our own times, from the same Dutch root springs the pride of the Chief Taricura and of the Caribs, his successors, and the incessant evil which it has wrought us from the year 1733 to the year 1738 (and, as I hold for certain, even to the present day) in the colonies on the Orinoco, with the death of many Indian catecumens, and the captivity of many more. On the 31st March, 1733, they burnt our Colony of Our Lady of the Angels, and on the following day they came down on that of San Joseph de Otomacas with twenty-seven war pirogues, and if the soldiers of the guard and the friendly Indians had not defended themselves valiantly, they would have burnt and sacked the place and taken my companions and myself prisoners, or killed us for their banquets, for this was the principal end of this and the following attacks, which I will briefly touch upon. ”

Mr President, Was it the Dutch Government that was doing this? Was it the West Indian Company that was doing this for the purpose of establishing a territorial title?

“ In the year 1735 the said Caribs burnt the settlement of San Miguel de Bichado, and took a great number of Indians prisoners, leaving many others dead. On the 29th September, 1735, they stormed the Colony of Mamo, which was under the care of the Franciscan Fathers. ”

And down below C.

“ Shortly afterwards they burnt the Colony of Concepcion, of Uyapi, from whence the Franciscan Fathers had to recall their missionaries of Piritu, that their lives might not be uselessly sacrificed. A few days afterwards they burnt the Colony of San Joseph de Otomacos. ”

The story is the same.

Lord Russell. — As far as I follow these, they were in the neighborhood of the Orinoco and north of the Orinoco.

Mr Mallet-Prevost. — Yes; I have left the story of those that were beyond.

Lord Russell. — It has nothing to do with these shown here.

Mr Mallet-Prevost. — I think some of them.

Lord Russell. — I was trying to follow; I did not notice that any was.

Mr Mallet-Prevost. — I am not dealing with any specific missions, but trying to deal with the question at large.

Lord Russell. — I quite follow.

Mr Justice Brewer. — This is from a Jesuit?

Mr Mallet-Prevost. — Yes.

Lord Russell. — And their missions were in the part to which I have adverted. His point there was in paragraph 6 :

“ I would also bring to the high understanding of your Majesty that this great River Orinoco is like an open door, giving free access to the heart of the provinces of Cumaná, Carácas, Maracaybo, and to all the new Kingdom of Granada. All these provinces have their fronts (so to speak) protected by fortresses, redoubts, etc., but their backs are unprotected, on account of the free access — ”

and so on. That is the point to which his attention was directed.

Mr Mallet-Prevost. — Yes; and he is referring here to the scourge of the country, these Caribs, and it is passages such as this, that have been made use of by the other side to try and prove Dutch control. It is most extraordinary.

Lord Russell. — Are you right in that?

Mr Mallet-Prevost. — Yes, I am.

Lord Russell. — It has not been read in that sense. I noted them when they have been read and some have been read half a dozen times.

Mr Mallet-Prevost. — Yes, I read some yesterday from Fray Benito and what the Caribs were doing. There is another paragraph No. 13, on page 86 which shows this was not confined to the Dutch.

“ It only remains to investigate the best means of remedying the evils before mentioned, and insuring the security so much desired, both for the missionaries and the provinces of the interior. The aforesaid Lieutenant-Colonel Marquis de San Philippe y Santiago, in his Report No. 4, already quoted, says, that to close the navigation and commerce of the whole Orinoco, not only to the Dutch and French, but also to the Caribs, which is the essential point, he considers that it would be sufficient — ”

and so on. Then lower down speaking of the year 1745 at the top of page 87 :

“ On account of the great strength of the Caribs, assisted by the Dutch, which is such that not only 30, but 60, and sometimes 80, armed war-pirogues have been seen in the Orinoco proceeding 500 leagues up the river in spite of the rapids, against which ships a large force and strong resistance is required. ”

Mr Justice Brewer. — 500 leagues up the river.

Mr Mallet-Prevost. — That is a long river.

Mr Justice Brewer. — 1 500 miles.

Mr Mallet-Prevost. — Yes. If this is to give a Dutch title the Dutch would be entitled to the whole of this region. Why are they limited by the Cuyuni watershed ?

Lord Russell. — You are astonished at the moderation of the demand.

Mr Mallet-Prevost. — I am indeed. I am thankful as I have said more than once, that they have left anything to us. I do not understand how such pretention could have been put forward.

In the second volume of the Appendix to the British Case I want to read an extract at page 137 which is another of the passages which I said I would cite to show the Dutch went disguised. This is just below E.

“ On these occasions Aruacas, Caribs, and Dutchmen come disguised, so as not to be detected. These last-named are accustomed to go ashore at the River Caura and elsewhere, and whilst the others are engaged in fishing for turtle, they occupy themselves in buying from the Caribs Indian slaves. The fishermen also engage in the same traffic, and buy from our Caribs other Indian slaves, and both the one and the other take a large number with them on their return journey. ”

That is a fine basis for territorial title! There are a number of other references some of which I shall pass by, one in the second volume of the Appendix to the British Case page 40, and in this connection I want to read a passage from the Attorney General's speech. It may be to this last document he has been referring, but he has been referring to these documents which speak of these relations of the Dutch and Caribs together and at page 312 of the notes he says :

“ Mr President, we have heard a great deal in days gone by at least those have who have ever had to study this question of the relations between native Tribes, and the view which civilised Nations take with regard to native Tribes, but from the point of view which we are now considering, this document shews as I submit conclusively that the Spaniards not only had no control beyond Santo Thomé but were recognising the fact that a powerful unsubdued Nation, a Nation with which they had to cope and compete, at least so far as possession were concerned, were dominating territory 20 leagues on the river below Santo Thomé — ”

and he mentions the place Aguirre —

“ pointing to the fact that, as I have said before, there was no control from Santo Thomé down the river Orinoco and that the outside that they could do was to endeavour to control the trade of the Orinoco. That document which was in the year 1739 shews, as I have submitted, to the Tribunal, the state of things which we are pressing upon the Tribunal as being the relative positions of the Dutch on the one side and the Spaniards at Santo Thomé on the other side ”.

I say it is nothing of the kind.

I might refer at this point to some of the statements as to the influence which the Spanish had over the Indians. And the third volume of the Appendix to the British Case, page 140, is the first; line C. This is what Gravesande says. I shall show later others, but I want to give all the others.

“ It is hard, my Lords, that neighbouring and allied nations should thus seek to compass the ruin of their neighbours upon the frivolous and really ridiculous pretext of bringing the slaves into the Christian religion — a whited sepulchre filled with nothing but rotting bones — because of all their Indian and black (so-called) Christians I have not seen a single one who knows anything more of religion than that there is a God, and perhaps not so much as that, or with entirely erroneous ideas concerning the Supreme Being. ”

Let us see if Gravesande was right. Will the Tribunal kindly turn to the British Case Appendix, volume 6, page 150, above E. We have an expression, I do not know if it is English, “ The proof of the pudding is in the eating ” and we shall see what came of all this.

Mr Justice Brewer. — Who is this from ?

Mr Mallet-Prevost. — It is a report in 1847 of Señor Andres Level on the Missions of Guayana.

“ Upon my appointment my first step was to ask the Governor at once for his orders, and for the recommendations and information which would conduce to the success of the inspection. ”

Then at page 153, above E :

“ In Guayana, which was the last to be settled, the Missions of Upata tell the whole story. One example will serve for all that could be adduced, namely, the ruined and grass-grown Mission of San Pedro de las Bocas, upon the right of the Caroni, opposite the mouth of the Paraguay. There, some magnificent ruins are to be seen — magnificent in proportion to the simple edifices of our east. They show a beautiful settlement, tiled throughout, which existed there. The church is colossal for our country. From the back of the high altar to the principal door is 53 yards, with a width of 16; the great nave has a width of 7 1/2 yards — ”

and he gives dimensions here —

“ each side, which supported the walls, all standing, and giving. from what can be examined, the appearance of a church of five naves. There, close to a quantity of tiles, were piled up joists and plates, leather hinges and beams, brackets and jambs.

lintels, and many other pieces half-buried, all hewn and planed. The size and structure of the church, as well as the ruins of the houses, give an exact idea of the splendour of the Mission, and, above all, of the hearty enthusiasm and creative vocation of those missionaries. The mind is elevated by contemplating the works, as it is also depressed by seeing the ruins and remembering the workers.

“ Those workers formed labourers, taught artizans, installed families, inculcated morality, erected villages, spread enthusiasm among their children or creatures, held them fast to their foundations, constituted society, and exhibited civilization as the work of a fiat. Everything that was useful was made with the Indians and by the Indians, and everyting was so united with civilizing Christianity, that even the voices of those who were lately heathens, heightened by the instruments they were taught, filled the church of the true God, invoking in those wilds the name of the Most High, that He might favourably receive beings who had been drawn to the kingdom of truth by the effects of Christian charity. ”

That is what came of it.

Then at page 46 of this same volume; this is a statement by Mr Bagot, in the year 1832, an English Officer.

“ I have the honour to return to your Excellency the two Memorials of Mr Postlethwaite and the letters of the Rev. J. T. Hynes and of Mr Jas. Fraser on the subject of the Spanish Indians; also copy of the letter, dated the 6th December, which I addressed — ”

and so on. These Spanish Indians he is referring to were Indians settled at the Santa Rosa Mission on the Moruca :

“ When your Excellency placed the second Memorial in my hand you were pleased to express a wish that I should ascertain from Mr Hynes his sentiments on the subject of Mr Postlethwaite's plans. I accordingly waited on the reverend gentleman, and was surprised to find that, so far from supporting the views of Mr Postlethwaite, he was decidedly averse to them, not only as respected the Indians of the Oronoco, but also those Spanish Indians located in and about the Morocco. He acknowledges that in a conversation with Mr Postlethwaite he expressed a wish, which he hoped at no distant period to realize, of visiting the Indian Missions of the Oronoco, but must have been entirely misunderstood by that gentleman as having assented to, or even for a moment contemplated, making the voyage in his boat, or assisting him in the objects he had in view in sending

into that river. Mr Hynes seems most anxious to draw the Indians now in the Morocco more into the heart of the colony, as well on their own account as with the hope that they might eventually become the means of extending Christianity and habits of industry and morality amongst the Indians of our settlements, and having this object in view, he seems averse to their being located on an estate and in the heart of the negro population."

That is what Spain was doing with these missions, Mr President. She was civilizing and Christianizing these Indians, and when in the early part of this century during the revolution which resulted in the independence of Venezuela some of those Indians who were staunch in their adherence to Spain left the territory and went and settled near the Moruca they took what they learned from the Spaniards with them, and that is what an English officer refers to in 1832 as a means to civilize these Indians, the Indians that had been debauched by the Dutch.

Again at page 33 of this same volume, and this is a statement of Mr Hilhouse. I read from between E and F :

" The Jesuits of the missions, prior to the political disturbances in that quarter, had brought them to such a state of comparative discipline and civilization as even to reclaim them from their natural propensities as hunters, and induce them to cultivate the soil. The superior cultivation of the refugee Spanish Indians in the Morocco Creek is a proof of this.

Their capacity for discipline was such that they acted in regular bodies in support of the regular troops in the cause of the Royalists, and their attachment to the Government was such that, on the breaking out of the trouble, great numbers emigrated rather than acknowledge the growing ascendancy of the patriots. "

Mr Justice Brewer called attention, a moment ago, to the fact that the statistics he read as to the condition of the Missions in 1766 were statistics which take in the Indians. They did, and I am not ashamed to do so, in view of the extracts I have read. The Indians were Spanish citizens, they were not savages in the sense that the Caribs hunting for the Dutch were ; they were civilized men, many of them.

I want to deal with the region in question. The first passage I cite is in the second volume of the Appendix to the British Case, page 53 E to 54 C, a statement of Iturriaga in 1747 ; it speaks of the Caribs and of the slave raiding and of the attacks upon the Spanish Missions at that time. Another one is a statement by Fray Benito, in the fourth volume of the Appendix to the British Case, page 20 from B to F and page 21 A to C. He is speaking generally from 1748 to 1769. It contains just one paragraph which I cannot pass over by a mere reference, just above C, speaking of these Caribs, and of these raids.

“ I also saw and recognized a Dutch mulatto who came disguised as a Carib, to instruct and encourage the Caribs. His name, and he himself, is well known in these Missions.”

General Tracy. — In what transaction?

Mr Mallet-Prevost. — Slave raiding; it was all surreptitions. We have been told there were Dutch slave traders who were resident at these various places, the mouth of the Curumu for instance. Will the Tribunal see the number of these Dutch settlements. *There* is one, *there* is another, and they are all over *here* (pointing out several on the map.) All of them were slave raiders. When the expedition went down the river in the year 1758. Why were they not found? They were not there. They were very careful if they had been there to get out of the way. And yet they talk of settlements. Will the Tribunal kindly turn to the second volume of the Appendix to the British Case at page 89; I read from C :

“ No one is better informed than your Excellency of the number and condition of the Indian Caribs dwelling on the banks of the Orinoco, and of the ravages they have committed on our Missions, influenced and directed by the Dutch.

Considering that it is the intention to deprive them of every means of subsistence, and thus put an end to the constant injuries they are inflicting upon us, concerning which, on this occasion, I communicate to you some orders, it was considered well, and even necessary, to make an effort to see if it be possible to pacify and reduce this Carib nation, and bring them into our Missions, by offering them all the inducements possible and compatible with our neighbouring provinces. On which account I have considered you as very well suited for that purpose, for, besides the many other qualifications which you possess, it is necessary to add thereto the fact that you are already known among these savages.”

That was not a first step, but it was an important step which I shall now trace from point to point till it results in the establishment of the Spanish trade in 1792 for the purpose of dealing with the Caribs in this particular region.

Mr Justice Brewer. — The Fort at Curumu?

Mr Mallet-Prevost. — Yes.

(Adjourned till to-morrow at 11 o'clock.)

TWENTY-SEVENTH DAY'S PROCEEDINGS AUGUST 10 1899

The President. — Mr Mallet-Prevost, the Tribunal is ready to hear your argument.

Mr Mallet-Prevost. — Before I take up my argument at the point at which I left off yesterday, Mr President, I desire in the first place to supply the citation, which was lacking yesterday, to an extract that I read to the Tribunal, and I was unable at the moment to say from which volume it was taken. It was from the third volume of the Appendix to the British Case at page 90, opposite C, D, and F, and also at page 91 of that same volume, opposite A.

And further, before proceeding with my argument, I should like to answer the question which was put to me by Mr Justice Brewer with regard to the existence of the Post of Arinda at the time when the colony passed into the possession of Great Britain. The Post of Arinda, so far as the records show, began its existence in the year 1741, and continued until the year 1788. The only reference which there is in the evidence subsequent to the year 1788 is a reference in the year 1790, not to the Post itself, but to the man who had been Postholder at Arinda, and there is no question that that Post like all the others in the interior had been quite abandoned by the time that the colony passed into the hands of Great Britain.

Mr Justice Brewer. — But during the time of its existence, am I right in my recollection that it was changed, that is that it was placed at one time lower down the river and then afterwards moved up?

Mr Mallet-Prevost. — Yes; but I am speaking of it as a single Post because it did not exist at the two places at the same time. I say that it ceased to exist in the year 1788, which would be 30 years before the Treaty of London, and that falls in line with what I have pointed out over and over again, that toward the end of that century the interior was wholly abandoned by the Dutch. They were moving away from it. They had attempted to get possession of the Cuyuni, but they had failed in that. They had been ousted by the Spaniards.

Lord Russell. — It think you meant to say that it was originally lower down and was later on moved higher up the river.

Mr Mallet-Prevost. — I thought that that is what was stated, my Lord.

Lord Russell. — Yes, that is what was stated.

Mr Mallet-Prevost. — And I did not mean to deny it.

Lord Russell. — No; but I thought that you were now saying that the movement was as you have endeavoured to show, from the Cuyuni, down towards the entrance of the river.

Mr Mallet-Prevost. — I was speaking of the general movement of the whole colony, my Lord. The fact that that Post was abandoned in the year 1788 falls directly in line with what I have been pointing out, that the colony of Essequibo itself was abandoning the whole interior, moving down towards the coast, and finally abandoning west and moving towards Demerara. The abandonment of the Post of Arinda, in the year 1788, falls directly in line with that general policy, and we have the fact, therefore, that during the latter years of the 18th century and during the early years of the 19th century, and at the time when the colony finally became vested in Great Britain, all those interior rivers had been abandoned, and what was left of the colony was limited to the mouth of the Essequibo, and to the few plantations along the Arabian coast, and even the seat of government had been moved over to Georgetown.

Mr Justice Brewer — Now in that connection, — I do not want to detain you but a minute, — you say that that Post was abandoned in the year 1788. Does the evidence show that there was any occupation by the Spaniards of the upper branches after that?

Mr Mallet-Prevost. — I think the whole history of the Essequibo, about that upper Post of Arinda, may be summed up in a dozen words. The Dutch went there for purposes of trade. They established this station which was just like the other Post that they attempted to establish. They held it for a number of years for the purpose of trade and it was finally abandoned and the whole region was left unoccupied. There was never any Dutch settlement, there was never any Spanish settlement, and there was much less Spanish dealing with that particular region than there was with the region of the Cuyuni and of the Massaruni. The whole question as to whether the Dutch could have acquired any rights in that upper Essequibo by virtue of that Post will have to depend upon the discussion that will come hereafter as to : in the *first* place, the rights of Spain as the Discoverer of that region, and in the *second* place whether or not territorial rights can be acquired by such occupation as is to be attributed to a Post such as the Post of Arinda.

Might I now say one word as to the Post of Arinda, and then I am through with that subject? In the map which has been presented upon the other side and in the British map which is in the Atlas to the Case, the Post of Arinda has been placed upon the west bank of the Essequibo. I really think that it matters very little whether it was on the west bank or on the east bank, but I do call attention to the fact that, when Storm van s'Gravesande sent his map to the company showing the locations of these various posts, he located it not on the west side but on the east side of the Essequibo. It is a matter that I do not think worth while calling to the attention of the Court, as to which bank it was located upon ; but I simply want to enter my protest against the assumption that it was located on the west bank of that river.

One more answer I desire to make to questions put to me yesterday.

The Lord Chief Justice of England asked me as to the most easterly mission in the year 1766. Possibly the best answer that I can give to that (and I am glad to have this opportunity of referring to them) is a reference to the maps, a series of maps, which is contained in the atlas accompanying the Counter Case of Venezuela, maps which were originally prepared for the United States Commission, but which have been reproduced for us in this Case and which show pictorially the condition of things at various dates. There is one map which refers to the year 1772 and which comes therefore nearest the date to which the Lord Chief Justice of England had reference. It is map No. 29 and the missions which were existing at that date are there shown. There is also a general map covering the whole period of the mission history. That is the map which, in a measure, has been reproduced for the purpose of illustration as a wall map here on my right; certain matters have been omitted in the reproduction, as for instance the conjectural site of that Cuyuni post of 1703. That is purely conjectural. Then the sites of the various posts which we can now locate and are located upon the Cuyuni are wrongly located upon this map because at the time of making it certain evidence, which has come to light in the British Counter Case, had not come to light, and the site of Tokoro was the first and not the second. It contains the location of the French fort at Barima Point and the place where the Swedes were in 1732, and contains other conjectural sites. But I have omitted from the wall map everything about which there was any uncertainty, and have reproduced on the Spanish side everything which existed, which never came to an end by reason of any Dutch aggression, and of course nothing came to an end by reason of any Dutch aggression. I have placed, as representing the Dutch possessions, those posts and possessions which continued for any period whatever and did not come to an end by reason of Spanish aggression. I have noted in a separate color the various Dutch posts on the Cuyuni which came to an end by reason of a Spanish attack or by reason of Spanish influence in that connection. The conjectural site of the French fort and the Swedish settlement has not been shown at all.

Lord Russell. — There is a reference to a supposed Swedish settlement?

Mr Mallet-Prevost. — Yes; it is not on the wall map. That was a map prepared in its historical features by Burr.

Lord Russell. — The Spanish fort is stated to have been there from 1782 to 1803.

Mr Mallet-Prevost. — That was a mistake; it lasted after that as I shall show today by reference to documents. If your Lordship will notice, there is a *plus* sign after 1803 (and there are a good many plus signs) it means it continued after 1803, but does not define the time it stopped. I shall show the Tribunal today documents which prove it was in existence at least as late as 1809. That map 32 is a compilation of the maps which preceded it.

Lord Russell. — It is not geographically correct I think.

Mr Mallet-Prevost. — I spoke of the basis for this map the other day. I think it is correct with the possible exception of Mora Passage.

Lord Russell. — That is the thing I had in my eye.

Mr Mallet-Prevost. — I think that is probably the only thing in which the map is wrong. With that exception I think the map is fully as reliable as the one produced in the British atlas; neither one, except certain actual features here and there, is based on actual survey.

Lord Justice Collins. — We are told the British atlas, with the Schomburgk line, is upon actual surveys.

Mr Mallet-Prevost. — Yes; I have denied that.

Lord Russell. — I am not sure I understood it in the same sense that my colleague understood it. I rather understood it was this, that all the coast line was surveyed by Schomburgk and to a certain extent towards the interior, but that after he had got some undefined distance from the coast then it was not the result of actual survey. However, Sir Robert Reid will tell us.

Mr Mallet-Prevost. — As Schomburgk went through these places he determined astronomically a point here and there as he went along; he made calculations as well as he could.

Lord Russell. — Would it be convenient to tell us now?

Sir Robert Reid. — It would require reference to the statement in the British atlas, and a little detailed reference. There are surveys for a great part if not all of the district within the Schomburgk line but certainly along the coast and I, for the moment, confine myself to that. Along the coast and in regard to all that relates to the situation of the Mora Passage, there is absolute survey.

Mr Mallet-Prevost. — The only allegation I desire to traverse is that that map is based on survey as to all of these parts. I think when the evidence of survey is presented it will be time enough to deal with that question. For the present any statements made by my learned friends are statements which are not supported by evidence in this case. I understand that the Attorney General desires to make some statements. He so indicated to me with regard to the surveys and when that time comes it will be time enough to meet it. At present we are not informed as to anything except that which appears in the evidence in this case but while one map may be somewhat more accurate than the other and while both maps are undoubtedly incorrect in many particulars where nobody has been, I think for the purpose of general investigation either map be taken as sufficiently correct to give the Tribunal a just idea of how things were during the periods whose history has been examined.

When the Tribunal suspended its session yesterday afternoon, Mr President, I had read a document relating to the year 1753, being certain instructions to Iturriaga in which again the presence of the Caribs in this interior region was referred to, their presence being coupled with the

slave trade and with the statement that in that slave trade they were influenced and directed by the Dutch. Taking up what I was saying at that point I desire this morning to continue the story, which these documents tell, showing how for a number of years, that come after the year 1753, these slave raiders, Dutch and otherwise, at the back of the Caribs, but always the Caribs as the prime movers, were through this region attacking at times the missions, sometimes threatening them with destruction and always making the missions very sensitive of their presence. As I pointed out yesterday, it was because the Spaniards felt the attacks of the Caribs for that purpose, because the Caribs were near them, and coming in and stealing the Indians whom they had settled in their missions, that these references are contained in Spanish documents, that what would appear from a superficial reading to indicate a great Dutch power behind them.

It is important in that connection to point out that when these attacks were made upon the missions and the missions destroyed, as happened in the case of the mission at the mouth of the Curumo and Mutunambo and various others, that the Dutch not only did not take upon themselves the responsibility for those attacks but they disowned anything which the Caribs were doing. At the same time these Dutch were going through disguised at times; and not only the Dutch from Essequibo but from Surinam and the French and others and inciting the Caribs to these various attacks.

The next document which occurs in order of date in reference to this matter is in the 2nd volume of the Appendix to the British Case at page 107, and I shall read two or three lines which cover the point that I am at present upon. Just below C is a statement of Alvarado and a statement which has been used very strongly by our friends on the other side for the purpose of proving some sort of Dutch control :

“ So returning to the chief subject of this article, I consider that in these Missions, which are more in the hands of the Dutch than in those of their proper owner, there exist the chief riches and the fame of the Province of Guayana which has flown throughout Europe. ”

This was made in 1755. We know what the history of the Essequibo colony was at that time. It was the year when the Dutch for the first time located a post in the Cuyuni river, a post which they soon moved down the river and from which, three years later, they were ejected. Absolutely no evidence at that time, as I have gone through the Dutch records, of any authorized Dutch action in the neighborhood of the missions and yet we have the statement here. Of course, it is a true statement if understood properly, in the light of facts and in the light of history as I explained yesterday, viz : that it was the Carib raids on those missions, raids instigated by individual Dutchmen and, of course, Alvarado could say

that those missions were more in the hands of the Dutch than their own. I think anyone of us being there and seeing how things were might have made use of that language without weighing what its legal consequences may be. It has been attempted here to extort a meaning out of it which Alvarado never gave it. The whole subject was the slaves and the Caribs attacking them, and the Dutch inciting the Caribs and as to that he said that the missions were more in the hands of the Dutch than ours. And he was speaking the truth, if properly understood, but not the truth as interpreted by the Attorney General when he cites this passage.

Another passage has been twisted in the same way, on page 108.

Lord Justice Collins. — Four lines down below D, on page 107 :

“ This opinion has more force in regard to Guayana, a province entirely depopulated of our people, and consequently rendered impossible for commerce, and so exposed in many parts to the irruption of foreigners that it would be a most desirable thing if its mines could be wiped out. ”

M. Mallet-Prevost. — I think that that language must be interpreted as it was evidently meant. They speak of certain portions of the United States being depopulated; we can say Alaska is depopulated. That does not mean there is no individual there. It is a general description. We know what missions were there in that year. We know the facts; and Alvarado's statement will not brush those missions out of existence. It cannot, and that is exactly the way these words have been twisted. Statements such as that, which did not mean literally what they say, have been taken by the other side and been used for the purpose of trying to establish facts they never meant to establish or express. So, on page 108, is another statement which has been twisted in the same fashion. I read from passage D :

“ I presume that by the further charge your Excellency gives me in this Article, as to whether I know if the road by way of Cunuri, which has been traversed by many, be open and practicable, your Excellency wished to indicate to me the corresponding route by land, and on this supposition, knowing the immense importance it is to His Majesty's service that I should fully inform myself of the pernicious avenues of the Province of Guayana to the Dutch Colony of Essequibo, I have surveyed for myself the banks of the Cunuri, Miamo, and the other rivers which flow into the Yuruari, and with pleasure would I have penetrated as far as the Cuyuni, if political reasons had not prevented me doing so — ”

and so on.

And the Attorney General actually suggests that it was some fear of

the Dutch, some political complication with the Dutch, that prevented his going to the Cuyuni.

Lord Russell. — What do you suggest was the political reason?

Mr Mallet-Prevost. — I cannot give a satisfactory explanation of what it was. I can say what it was not. Alvarado was one of the leaders of this expedition. Iturriaga was the other and there was certain jealousy and difficulty between the two and the reference he here gives is a reference to the question of international politics. The fact it cannot have referred to the Dutch is clear by the history of that time. Only three years later a Spanish expedition went down and cleared that out and no political reason stopped it and in 1755 they were not as strong as in 1758. They had just established a post. We know what the condition of the Essequibo colony was at that time. I went very fully into that and to suggest that such a passage as this means Alvarado did not go there because the Dutch kept him out is to read something into it, which nobody who knows the facts, can honestly read out of it. I do not know what political reasons kept him out but I do know that they were not Dutch political reasons.

There is another passage, at page 109. I read from the top of the page :

“ Your Excellency refers to the land journey — ”

this is another statement by Alvarado —

“ made by the Caribs from the Orinoco to their refuge in the islands of the river Caroni — ”

I call attention to the fact that these very Caribs, that in this year 1755 and so on, are supposed to have been under the influence of the Dutch were some of them Caribs living up the Caroni, away beyond this disputed territory —

“ which you mention and which lie to westward of the Mission of Capapui. And on this understanding, I have ascertained that they navigate the Orinoco up to the mouth of the Caroni, enter it and pass its fall by night, and continue their course up the stream until they reach the islands mentioned by your Excellency — ”

showing that these incursions were surreptitious and secret —

“ where, if we may so express it, they make a station for ingress into the interior. ”

It was always the Caribs that the Spaniards had to be combating.

“ They make their entrances in two ways, one by leaping directly ashore in the great savannahs and woods which run

from the bank of the Caroni up to the Mission of Capapui, and by which they also go to Cunuri, Tupuquen, and other villages which were destroyed in 1751, and even to Miamo, until they reach the woods of the southern slope which are inhabited by Caribs and other savage tribes, where they capture their poitos or slaves, whom they carry off to sell to the Dutch. ”

These were Carib attacks not Dutch attacks :

“ By the other way, without disembarking, they follow the course of the Caroni and enter an arm of this river which runs to the south-east and ends near the Yuruario, which comes from the south, like the Caroni. They drag over their canoes and launch them in that river, and as the Yuruario receives various rivers, and among others the Miamo and Cunuri, they communicate throughout with ease, owing to their skill and practice in navigation, and when they think fit they enter through the said stream into the Cuyuni, and thus, if they choose, into the River Essequibo. ”

Showing that these regions were being made use of by the Caribs; that they were getting slaves in Spanish territory; that they were carrying them down the Cuyuni and selling them to the Dutch in Essequibo and it was that Carib slave traffic that was in the minds of these Spaniards when they were writing these extracts which I am reading. The reason that they connected the Dutch with this matter was because now and then they found a disguised Dutchman among them and because they heard of a wandering Dutchman here and there buying slaves and inciting these men to the acts which they committed and lastly because these Caribs taking these slaves from Spanish posts took them down to Essequibo, of course, to the Dutch to sell them there.

In the 3rd volume of the Appendix to the British Case at page 44 is a statement by Diguja. I read from between B and C :

“ And, at the instance of the Catalonian Capuchin Missionaries, His Majesty issued the following Resolution : The Catalonian Capuchin Missionaries of the jurisdiction of Guayana have represented the injuries and atrocities perpetrated in their Missions by some Carib settlements, under the influence of the Dutch from Esequibo, as it is surmised — ”

it was purely a question of surmise based on the fact they had seen a few Dutchmen. This bears out to the letter what I said —

“ on account of their having taken refuge in the said colony — ”

that is the reason they had run away —

“ and because the Governor of the same grants them letters patent to make slaves of all the Indians whom they meet, and as a remedy they ask, among other things, the increase of their escort, up to forty men, with a Captain and a subaltern, their salaries to be payable from Santa Fé, the said soldiers to be of good morals and habits, and to be replaced by others upon the representation of the Prefect and Judges of the Missions, in case they set a bad example; and in order to rescue the souls of the rebellious Caribs — ”

treating the Caribs, as they were, Spanish subjects, many of them, as I pointed out yesterday, in the missions.

In passing, I point out to Lord Justice Collins, Santa Fé and the administrative connection between these places, places as far away as Santa Fé. There is another statement by Diguja at page 64, I read from just below C. I am selecting, Mr President, in reading these passages, the passages strongest against me, the passages which have been used for the purpose of attempting to prove a Dutch settlement :

“ The Colonies of the Dutch are in the highest degree prejudicial to the Province of Guayana, especially that of Essequibo as being nearer to the Orinoco. By making incursions along this river — ”

I call attention to that word “ incursions ” which properly explains what was being done. These Dutchmen would run up there. They were incursions, not settlements —

“ by making incursions along this river and along the Massaruni and Cuyuni, protected by the Carib Indians, though not of this province, to plunder the Indians, of whom they make slaves just as they do of the negroes, whom they sell and employ in their plantations and farms. In order to obtain these poor Indians they adopt every method which their greed and tyranny suggest, seeking to maintain all good friendship with the Caribs, a fierce and warlike nation which overruns the whole of this extensive province and part of Barcelona, Caracas and Santa Fé — ”

I pointed out that fact yesterday —

“ in search of the other Indians, over whom the Caribs have the mastery because they are very peaceable and docile, for which reason they are continually being attacked in their huts or lands, and then the men are slain and the women and children made prisoners, for these are the ones of whom they make slaves; and by these incursions they are continually disturbing the Missions of the Reverend Catalonian Capuchin Fathers — ”

Was it not natural for Spaniards such as Alverado, cognizant of these facts, to say that these missions were more in the hands of the Dutch than of the Spaniards?

“ which are not yet firmly established, for their Indians take to the forests at the slightest report of Caribs, while the measures taken by the missionaries to restrain them are insufficient. This is due to their timid and cowardly nature, which they generally overcome, if perchance there is an escort of Spaniards, in the village, to whom they betake themselves for protection. The Dutch natives in those Colonies who accompany the Caribs teach them to manage fire arms, and are even more inhuman than the Caribs, for which reason great vigilance is needful to restrain them and defend the said Missions, which they endeavour to destroy in order that they may not serve as a check to their Colonies, as shown in the map. ”

Mr Justice Brewer. — The date of this is 1763, I think?

Mr Mallet-Prevost. — Yes. These slave raiders were utterly regardless of territorial limits. It is pretended this is an occupation which goes up to a line, called the Schomburgk line, or even to the extreme claim of Great Britain. There is no such thought in the minds of these slave raiders. They did not regard territory or territorial rights.

Lord Russell. — At page 38 there is an expression which seems to me to attribute more importance to the Dutch, than you seem to think just, opposite D. Apparently it was then being considered a possible event to abandon the territories at Guiana.

“ Transferring to the Angostura the small settlement in which the scanty garrison of its fortifications is lodged, or on the loss of the missions under the Catalonian Capuchins — ”
we know where they came and then come these words :

“ the bulwark against the Dutch Colony. ”

Mr Mallet-Prevost. — I know, my Lord; that is the same thing. I submit you did not get at the meaning of this, if you take an expression of this kind. The man has been talking through the thirty-eight pages that go before and it is the Caribs, and the Caribs incited by the Dutch; the Dutch from Essequibo are the principal ones, I admit, because they are the nearest ones and it is a bulwark against that colony. But it is a general term which cannot be interpreted to mean, in the light of facts as we know them from Dutch records, more than we know them to be.

Chief Justice Fuller. — I think I ought to call your attention to a paragraph on page 71.

Mr Mallet-Prevost. — I wish you would.

Chief Justice Fuller. — Opposite E :

“ As a bulwark against the Dutch who endeavoured by every

means in their power to settle in the interior of this province and at the mouths of the Orinoco the key of these vast dominions. ”

Mr Mallet-Prevost. — That was written in the year 1763 and after the attack upon the Dutch Post in the Cuyuni which might be interpreted as some attempt to settle. It was also after the expedition of Flores on the coast, in 1760, and this reference to these slave-traders or to any other Dutchmen who were there is one which, I do not think technically describes it; because, I say, they were not settlements. But as a man would use ordinary language it is perfectly intelligible; he might use this language and still the facts be exactly as I have pointed them out to be.

I want to call attention now to a number of extracts which show the methods that were employed by the Spaniards to exercise control in this region and the results achieved. I called attention yesterday to a number of extracts which had reference to the regions beyond, and there is a statement in 1760 by Iturriaga which will be found at page 183 of volume II, Document 347. I read from below D :

“ Since my arrival in Guiana I have treated the Caribs with kindness and presents, in order that leaving their dwellings on the hills, they might come to settle in the Missions; but they, far from giving ear to my persuasions, have gone higher up beyond the falls of the Rivers Paragua, Aroi and Caura, considering them insurmountable to the efforts of the Spanish. Thence they made war upon other nations, took slaves and sent them to Essequibo, depopulating in this way the dominions of the King, whilst peopling the territories which the Dutch enjoy, and increasing their possessions.

The Caribs in the settlements made repeated journeys to the dwellings in the woods, obtaining permission from their missionary fathers on the pretext of bringing to the settlement some of their relatives, and occupied themselves in the same works as those in the woods. Some remained there and others returned to their settlements. Others threatened, after the expedition had left, to take vengeance on the Spaniards who had subjected them to the Missions, and there were not wanting some who declared themselves King of the Caribs and King of the Orinoco. ”

And right from that extract we can see precisely what policy Spain had in this region, the same policy that she had had in all the other regions, namely to establish missions, to get as many Caribs as she could into those missions and those that would not come into those missions to drive them out; and here we have the statement that some of those Caribs were settled in missions and others driven out. They went to where they thought Spaniards could not get them, always retreating before the Spaniards. When I gave the story yesterday of the Cuyuni river

subsequent to the attack upon the Dutch Post in the year 1758 it was a story of the Indians being driven from that river by the Spaniards, those of the Caribs who were not settled in mission villages.

Lord Russell. — Is there anything to show how it was proposed to deal with the Indians who were induced to come into the missions? I mean to say, were they expected all at once to leave off their vagabond, wild life, or what was the mode of dealing with them? Was there any suggestion how they should be dealt with?

Mr Mallet-Prevost. — I have a few extracts on that subject which I shall read to-day. Of course it was a work of time as any mission must be.

Lord Russell. — Your comment upon that last extract amounted to this : Come into our missions, and if you do, well and good; if you do not, we will drive you to the back of God-speed.

Mr Mallet-Prevost. — Now you desire to know what was done with the Caribs that went to the missions?

Lord Russell. — Yes.

Mr Mallet-Prevost. — They were civilized, little by little. It was a work of time; they were civilized as the others were and a great many came to be the best subjects of Spain.

Lord Russell. — You will refer to some extracts on that?

Mr Mallet-Prevost. — Yes. There is no question of that. I have some in mind, in 1789, which show what work had been accomplished among those very Caribs at that very time. I will trouble the Tribunal to turn again to the third volume of the Appendix to the British Case, page 8. This is another statement of Diguja going to show what was being done. I am trying to take these in order of time and I read from paragraph 12 which is just above D :

“ All my predecessors, from Don Gregorio de Espinosa down, were particular in taking measures to insure the safety and development of these provinces, and after my general visit I have taken no small number myself, especially for the good government and proper treatment of the Indians, and to prevent the evil effects of intoxication in the Carib Missions on the banks of the Orinoco — ”

some of these Caribs had been established in missions quite near to the Orinoco itself —

“ Pointing out to the deputies of Barcelona, Aragua, Pao, and Guayana, the districts to which they ought to hurry at the slightest rumour of disturbance, and laying down the method of mutual assistance; and similarly to the other deputies of the Government; as appears in detail in the final record of the general results of the said visit, submitted to His Majesty through his Royal and Supreme Council of the Indics. Owing to these measures and those of my said predecessors, all the lands and

ranges of these provinces are traversed without the least risk, and a man can now go alone to and from Guayana — ”

he is speaking from Cumaná —

“ without any fear. Twenty years ago it could not be done without a strong escort. No foreigners allied to the Caribs are now seen in the said country, nor Caribs, save those of a settlement. ”

Does not that show what was being done with these Caribs? :

“ By sea, through the *Golfo Triste* and the mouths of the Orinoco, all these natives, who are sailors by profession, pass to and fro with equal security, as there are excellent pilots both for the north coast and for the River Guarapiche, the creeks of Santa Isabel, Teresen, and Coiquar, the coast of Paria, and the labyrinth of the mouths of the Orinoco. ”

That is what had been accomplished in a certain part of this territory. Caribs had been subjected and were civilized and living like citizens in the missions and men could go backwards and forwards in safety whereas twenty years before it was impossible to do so.

The President. — This is a report from the Governor General?

Mr Mallet-Prevost. — Yes; a report from the Governor General. Let me call attention to this fact (as I showed yesterday by a great many documents, the representations by the Spanish official authority as distinguished from the mission authority with regular visits to these places) that the Governor General speaks of these missions as the means for preservation of peace in his province.

The President. — As a proof of the progress which had been made in his province.

Sir Robert Reid. — Did you mention it was the province of Cumana?

Mr Mallet-Prevost. — Yes; I stated he was referring to the region from Cumana to Guiana, but I gave it as the result of this policy.

Sir Robert Reid. — I did not catch it; that was all.

Mr Mallet-Prevost. — Now on page 20 of volume III is a further statement which I take from just opposite B :

“ The Missions in charge of the Catalonian Capuchins have been assisted. The Caribs and Dutch who, by way of the Cuyuni and Massaruni Rivers, and on the rear of the said Missions, had attempted to wage hostilities against them, have been harrassed; and to prevent this in future several expeditions have been sent out, and one of these surprised a stronghold, built by the Dutch on the River Cuyuni, where they had gathered all the Indians of other tribes captured by the Caribs and sold to them for mere trifles. ”

This is a statement by the Governor, in the year 1769, in which with reference to this particular territory and these particular rivers he states what has been accomplished. The Caribs and the Dutch have been harassed, expeditions have been sent out for the purpose of carrying out this Spanish policy against the Caribs and then in the next volume, volume IV, page 71, is a statement as to a later date, of 1770 by Centurion. Some complaint had been made by Gravesande evidently as to a Spanish attack upon the post itself; we are dealing now with the year 1770. It was in the year 1769. If you will remember, Mr President, the second Dutch post had been moved down to its last location, at Tonoma rapids, at this point (pointing it out on the map) and there was a rumour, the account of which I read yesterday, that some Spaniards had been to that post and had taken away from it certain Indians belonging to the Dutch. Centurion writing about that says :

“ The story of a Spanish detachment which Gravesande states, advanced last year from the Orinoco to the Post in the Cuyuni and seized many Indians, threatening to return and go to the Maseruni to take a party of Caribs, and descend that river, and attack the Post of the Company there, is, without doubt, some invention of the slave agents which the Dutch have in that part, and they bitterly resent seeing some savage Indians, either Caribs or Guaicas, of those dwelling in that neighbourhood, coming to settle in our Missions. For from here no detachment has been sent to those rivers. ”

I want to throw in a word of explanation as to that. It is important. The primary authority in this region was the missionaries themselves, as I stated yesterday. They were the ones that went out and drew the Indians in; and it happens that at some of these dates, not this time but a little later, when Marmion came, there was considerable jealousy between the two authorities, the authority at Santo Thomé and that of the missions, but both derived their authority from Spain. The one now speaking is the civil authority in Santo Thomé and he says, from there no expeditions have gone down to the Cuyuni, but we see from the statement he goes on to give immediately after that he was in no way meaning there was not missionary activity in that quarter.

“ And I know that some Indians from the forests between the Cuyuni and Masseruni have, in these recent years, come into the Missions of the Catalonian Capuchins, induced by the Caribs — ”

the Caribs had some of them not only ceased their hostility to the Spaniards but the Spaniards were using those Caribs for the purpose of bringing other Indians into the missions. Notice how many of these Caribs settled in the missions —

“ induced by the Caribs, who have been settled to the number of 5 000 for over twenty years, without our knowing until now that this numerous tribe belongs to the Dutch, as Gravesande says, nor still less that these forests are a part of the territory of the Republic, for they have always been the nursery for the reductions of the Catalonian Capuchin missionaries of Guayana. ”

And that is what I pointed to yesterday and that is the sentence I had in mind when I said this whole region was the nursery of those missions :

“ The two houses garrisoned by a large force, your Excellency will see from Document No. 1, are two villages of Indians, founded by the Catalonian Capuchins on the bank of the Yuruary, united to the other Missions, and without any other garrison than one soldier in each, as an escort to the missionary; ”

the principal part of the soldiery as I shall show later on was at Santo Thomé itself. There were only a few scattered through the region for police purposes —

“ their supposed proximity to the Post of the Company is equally false, for they are distant from it more than 70 leagues by bad roads. ”

Showing how far away the Dutch were.

Lord Russell. — I take that to mean that the first mission was 70 leagues away.

Mr Mallet-Prevost. — I think that is very true. It simply shows how far away he regarded the Dutch. The post was there (pointing on the map). I do not know that he was accurate in his measurements; 70 leagues, which is 210 miles, and Cura was at that time probably the nearest mission. It was a long distance and what he states is approximately true.

At page 80 is another statement in the following year 1771.

Lord Russell. — There are a number of pages on this. It is not fair to trouble you by calling attention to them because they have been read so often, but upon the top of page 73 is this extraordinary statement :

“ In the vast province of Guayana so fertile and so advantageously situated all the coast is occupied by foreigners and there only remains to us Spaniards the mouth of the Orinoco in one corner as an outlet to the sea. ”

Mr Mallet-Prevost. — Well, my Lord I referred to that passage when dealing with the coast.

Lord Russell. — I recollect you did.

Mr Mallet-Prevost. — Yes; and I showed how absolutely contradicted it was by the facts as known from the Dutch records and showed the

interpretation that must be put upon that by a number of contemporary documents. I showed, at that time, the Dutch were known to be no nearer than Moruca and it is in the light of those known facts this must be interpreted; and it is because those known facts are utterly disregarded and sentences such as these are attempted to be interpreted literally that our friends have been allowed to make the allegations they have.

Lord Russell. — These are negative statements you observe;

“ There only remains to us Spaniards the mouth of the Orinoco. ”

Mr Mallet-Prevost. — This is in the year 1770; and if your Lordship will recollect the Spanish expedition that went out in the year 1760, in the year 1780, in the year 1790 —

Lord Russell. — And which came back again not keeping the point of attack.

Mr Mallet-Prevost. — No; but driving all the Dutch out that were there.

Lord Russell. — And leaving the Dutch to come in again.

Mr Mallet-Prevost. — They never came in again after 1769. I point to the fact that only for trading purposes; there is no evidence they did come back, and we are speaking of the year 1770. These documents must be interpreted one with the other and not taken one alone.

I was about to read from page 80, bottom of the page above F :

“ I can assure your Excellency that, by virtue of the new situation of the capital in the Angostura, and the lesser settlements on the banks of the Rivers Caroni, Paragua, and Caura, the Caribs have been entirely subjected — ”

Lord Russell. — Is this still Centurion?

Mr Mallet-Prevost. — No; Solano. This is a very important statement showing the results of this policy which for 100 years the Spaniards had been carrying out :

“ the Caribs have been entirely subjected and many tribes have thus been freed from their persecutions, the former being in the habit of making prisoners among the natives, and selling them as slaves in the Dutch Colonies of Essequibo and Surinam, and these tribes are now making settlements, and their affection to the Royal service is increasing. By means of the Fort of San Carlos de Rio Negro, and the settlements of that frontier, the same results have been obtained as regards the Portuguese. ”

Because this scheme was a very comprehensive scheme; this San Carlos de Rio Negro was away in the interior. It was one comprehensive scheme Spain was carrying out, and these are the results, that she was achieving, little by little. At page 86, opposite C :

“ In a letter of the 5th February last, you gave an account of the extension and increase of the new town and Province of Guiana, since the removal to Angostura was intrusted to you; you inform us also that you have been unable to commence the work of constructing the Fort of San Carlos, as you have received no help from Santa Fé. ”

That shows the expected cooperation between those Spanish settlements :

“ The King has been advised of this, as also of the great advantages arising from the new settlements, you being able by means of them to hold the Dutch of Essequibo within their legitimate possessions, and to free the other tribes from the hostilities of the Caribs. ”

This is in the year 1771 ; and you will recollect that I showed by the records yesterday that it was in that year, 1771, that the last postholder of that lowest Cuyuni post died at his post and that is the last we know of that post. The Dutch had been driven out of this river. These missions resulted, as the King said to Solano, to hold the Dutch of Essequibo within their legitimate possessions. That is in the river Essequibo itself and the other tribes had been freed from the hostility of the Caribs. I showed how those Caribs were driven out and what difficulty the postholder had, when he went back in 1766, to get the Indians to help him and finally the post was a failure because he could not get Indians to help him. I come now to the visit of De la Puente in 1769, the record of which is in the 2nd volume of the Case of Venezuela. May I read another document first, which is in the same book, which explains the purpose of De la Puente and is, in a sense, our first introduction to the fort that was located on the south bank of the Cuyuni. I read from page 447 of the 2nd volume of the Appendix to the Venezuelan Case :

“ To comply with the duties of the office I hold, and in order not to retard the measures that may conduce to the establishing of the village and cattle farm of which your Reverence and Assistants inform me in a communication of the 8th instant, I have decided to commission the Adjutant of the forces here, Don Antonio Lopez de la Puente, for this service. ”

I might state, in explanation of a matter that I referred to a moment or two ago, that we have now come to the time of Marmion, and there was for some time considerable jealousy between Marmion and the authorities at the missions. The missionaries wanted to extend their territory. They wanted to found the town of Tumeremo, which was subsequently founded, and they encountered considerable opposition from Marmion; Marmion alleging that it would not be safe to found it on account of the attacks which still continued by the Caribs, for slaves were still being

made. The matter finally resulted in the sending of de la Puente to explore the situation and find out whether an advance fort could not be placed upon the Cuyuni itself, so as to prevent these Carib attacks, and also control that region; and these are his instructions. This is the letter in which Marmion refers to the instructions that he has given to de la Puente in that regard.

The President. — Last night, Mr Mallet-Prevost, you said in answer to my question, that the missions were political institutions or instruments?

Mr Mallet-Prevost. — Yes.

The President. — I must say that I cannot well understand the relations between the missions and the Government, that is the Spanish state. Were these missions really quite independent of the Government, or were they obliged to give an account of their actions, of their policy, and so forth, to that Government? Had the missions a separate government and were they independent of the governing body at home? As to the relation between the state or the Government, on the one side, and the missions, as instruments of the Churches, and political instruments also, on the other side, I must say that to me these relations are not quite clear. Perhaps you will kindly in some way explain that to me.

Mr Mallet-Prevost. — I will endeavor to do so now, Mr President, if I can make myself clear. The relation is very clear to my mind, and I will do my best to express it. I understand that the missions had a dual character and a dual relation. As I explained yesterday, they were there doing the missionary work and religious work, and they were there doing also a political work. The Spanish king was the head of the Body Politic and he was the head of the Body Ecclesiastic. The Church was a State Church.

Lord Russell. — Head of the Body Ecclesiastic? I should think that that is doubtful in Spain.

Mr Mallet-Prevost. — In so far as the missions in Spanish territory were concerned, my Lord. I do not mean to say that he was replacing the Pope, who, of course, was the ultimate Head.

Chief Justice Fuller. — Are you right there? Did not the Pope issue a Bull in which he gave to the Kings of Spain the power to appoint Bishops and Archbishops and so forth?

Mr Mallet-Prevost. — I do not know whether the Bull of Alexander VI did or did not do that —

Chief Justice Fuller. — No, not that Bull, but another one.

Lord Russell. — I think that would be a right to veto only.

Chief Justice Fuller. — Perhaps so, and I think it was loudly complained of afterwards by other Popes.

Lord Russell. — But that is not germane to this matter, apparently.

Mr Mallet-Prevost. — However that may be, I rest upon the political connection between the two, and within Spanish territory those

missions, as I said a moment ago, even in their religious character, were under the control of the King : but let that pass. These missionaries as I pointed out yesterday were not only there as representatives of the Church, whoever may have been the head of that Church, but they were there as the representatives of the political power. They were civil magistrates as well as religious magistrates. They could punish these Indians who were under them not as Priests but as magistrates, representing the Spanish power. The soldiers who were sent there by the Governor of Santo Thomé were soldiers who were under the direction of the missionaries, and hence it is that those missionaries were the political agents of the Spanish Government and that fact is so clear, Mr President, that when your Excellency first broached that point to the Attorney General in his opening speech, he recognized the fact that, for the purposes of occupation here, he regarded the missions as Spanish settlements.

The President. — I thank you for your explanation, which has cleared up the point.

Mr Mallet-Prevost. — If I have not made it clear, I wish you would say so, Mr President.

Chief Justice Fuller. — I simply wish to call to your attention here, that on page 86 of the 4th volume, in the year 1771 there is a letter of the King to Solano, and Marmion came immediately after that, because there is a letter from Marmion dated July the 20th, 1771 on page 87, and he goes into it elaborately. That was his controversy. It was certainly with reference to the Catalonian Capuchin missionaries. In that letter he points out that some of the villages are so poor that they cannot support a soldier and that they have not been brought in to be taxed, and so on. I think that throws some light upon the subject under discussion.

Mr Mallet-Prevost. — There is no question about it. There was, as I said just now, some jealousy between Marmion and these others, and it was precisely because Marmion claimed that he had that political power and that the missions were under him; and he succeeded in that controversy.

The President. — They were obliged to recognize him.

Mr Mallet-Prevost. — They were obliged to recognize him.

Mr Justice Brewer. — I recollect this happening the other day when a discussion came up on the matter (I cannot put my hand on the exact reference now) that when the Catalonian Capuchins and the Jesuits divided the territory which they were to occupy, it was referred to the King of Spain, and he gave his advice and directed all his officers to respect that and to assist in carrying it out.

Mr Mallet-Prevost. — There is no question about it; and may I just here notice, from the letter that I am going to read directly from Marmion, that he gives certain specific directions to the missions and he gives it to them as their political Chief. Let me now read this letter. It is at page 447 of volume 2 of the Venezuelan Case. I had just begun to read

a few lines from that letter. I call attention to the fact that this is a letter from the Governor to the Prefect of the missions. Now what does he say? He says :

“ To comply with the duties of the office I hold — ”

that was a political office —

“ and in order not to retard the measures that may conduce to the establishing of the village and cattle farm of which your Reverence and Assistants inform me in a communication of the 8th instant, I have decided to commission the Adjutant of the forces here, Don Antonio Lopez de la Puente, for this service. ”

When the Missionaries wanted something established they had to get an authority from the civil power.

“ He will, on his arrival, present and make known to your Reverence the instructions with which he has been furnished. It will be well that your Reverence appoint a religious acquainted with the place to accompany this official ” —

Is not that a direction from the political Chief to the Prefect of the missions to do a certain thing in connection with this Expedition? The Prefect was his subordinate. —

“ for the purpose of examining and becoming acquainted with the site of Tumeremo, and an advantageous and proper place on the Cuyuni, where a village or post may be established, with the object of protecting the rear of the Missions, and rendering help to the new reductions, which the venerable community under your Reverence's charge are continuing to found. In this view, I remember to have conferred with your predecessor and other religious, who inform me that the junction of the Rivers Yuruary and Cuyuni is very well adapted for that purpose. ”

And let me here point out what will be shown by the extracts that I am going to read later on, that there was a difference of opinion between the Prefect and the Missionaries on the one hand, and the Governor on the other hand, as to where this Post on the Cuyuni should be located. The Missionaries did not want it to be located at all where it was located, and it was the civil power that said it shall be located where it was, and it was so located.

Lord Russell. — I do not think there is any doubt at all in the minds of the Tribunal as to what the position of these missions was. The President, I think, is quite satisfied with your explanation.

The President. — Yes.

Mr Mallet-Prevost. — Thank you.

“ But nevertheless I have instructed the official not to omit to examine carefully all parts of that neighborhood for the purpose of seeing whether there may not be another more advantageous position better suited for the purpose, as this is an affair as important to His Majesty's service as beneficial and useful to the preservation and increase of these Missions, and I trust your Reverence will supply the said Don Antonio Lopez de la Puente with all that may be necessary to enable him the better to fulfil the commission with which he is charged. If you will also send a Circular letter to the Religious under your charge in the villages through which he may pass to see that the same orders be duly observed, I shall feel obliged. ”

And that confirms precisely what I have been saying as to the orders from Marmion to the Prefect. Then comes de la Puente's report which will be found in the same volume of the Venezuelan Case at page 463. It begins on page 462. The first part is interesting simply in that it gives some information as to the geography of that river, and shows that it was easily navigated in its upper branches, as I pointed out when I discussed the geography of that district. The first part of this report, Mr President, simply confirms what I have said about the geography of this region, the easy navigability of the upper reaches of this Cuyuni river, and then further down came the rapids and the falls. I shall begin to read from about the middle of page 463 :

“ On the 3^d we left the mouth of the Curumo at 8 in the morning, on account of having left in this place six arrobas (about 150 lbs. weight) of cassave bread and four of meat 100 lbs. weight) to await our return, and in front of this mouth and all along the creek, there is high mountainous land to the bank of the Cuyuni and in the lower part suitable for a village and tillage of the land, flat but high. During all this day we proceeded in good water to the Island of Maiparipati, where we encamped, having travelled this day eight hours. On the 4th we departed from Maiparipati, and we proceeded all this day in good water for eight hours, encamping on the Island of Acayo. On the 5th we left Acayo, and at a short distance we came to the rapid of Canayma — ”

which is the very first of those rapids and is a short distance below the Acarabisi. It is not marked on this map on the wall, but it is somewhere about here (pointing). It is marked on the British map. It is spelt differently on the map, but it is the same one :

“ where the Cuyuni divides itself into two branches as far as the Island of Araripira, where we remained, having only gone during this day four hours, on account of having met some Indians who were complaining against the Indian Manuyari, who had taken them prisoners and carried them to the Dutch, who kept them two months working, and after that sent them to their village. — ”

and it is important to note that as this Spanish officer comes down, these Indians complain to him as to what had been done, and we have the action which he took in that connection —

“ and after that sent them to their village, the said Manuyari bidding them tell the Father of their Village that he would kill him and burn the village, for which purpose he would ask the Dutch for help. On account of which, and in view of the complaint which they made to me of this Indian, knowing at the same time that he had already killed the daughter of the Indian Cuayari, of the same village of Topuquen, I resolved (as he was living, as they told me, actually on the Cuyuni as a spy and sentinel of the Dutch) to take two experienced Indians of those whom I met for the purpose of apprehending this Indian on account of his insupportable audacity. Besides what I have just mentioned, these Indians also informed me that he had also carried away an Indian woman named Josefa from the Indians of Panapana about three years ago, and that he had her with him, and that this same Manuyari was the very one who was continually inciting the Dutch to come and burn and destroy the villages of the Capuchins. Considering, therefore — ”

this shows the kind of incitement, and that it was done by individuals.

“ Considering, therefore, that if he were not apprehended, and if warned might go and inform the Dutch, and, consequently, I should not be able to carry out my commission, or might be surprised, for all these reasons I thought it well that he should be seized, and on this understanding I dispatched the Indians above referred to to the village of Topuquen ” —

and I might state here, what is evident from this passage, and what is also evident from another passage that I shall read later on, that Puente going down this river felt some apprehension as to encountering the Dutch. This was in the year 1789. As I stated a moment ago, it was the missionaries, through the mission agents, who had been going up and down in those rivers in the way that Storm van 's Gravesande related to us in the extracts that I read yesterday to the Tribunal. The Governor himself in Santo Thomé had not sent the expedition. This was a Spanish

officer coming down with less knowledge of that region than the missionaries themselves had, and he did not know what the condition of the Essequibo colony was at that time. But as I read this passage to the Tribunal, will they kindly remember that it relates to the year 1789; that is 16 or 17 years had passed since the Dutch had completely abandoned their lowest post on the Cuyuni. The interior was abandoned. I shall show by what de la Puente himself says that one Dutchman and four companions were down about Kijkoveral. The junction of those rivers was abandoned except for a few isolated residents there, and the colony had all moved down, but he did not know that. Then this goes on : —

“ And in regard to the fact that there had remained in the port of Cura forty Carib Indians of Guascipati and Cumano, who were going down with cargoes of hammocks and deerskins to sell to the Dutch — ”

and I want to point out this phrase, and there are a number of them in this same letter and, I think, also in some subsequent documents which I shall read, to show this, that at this time the Indians who were settled in the Spanish Missions were the ones that were going down to the Essequibo carrying Hammocks and other articles down there, and there trading with the Dutch. It was a trade not carried on by the Dutch *up* the Cuyuni, but it was a trade carried on by Spanish subjects *down* the Cuyuni, to the Essequibo, and by Carib subjects.

“ without mentioning those who would go from Morucuri — ”

and then he mentions a number of those other Spanish missions, and that all the Indians go down from them. —

“ and all the others who annually descend by the Yuruari and Curumo carrying hammocks, for since the planting of tobacco has been prohibited they do not take any, I warned these Indians to tell those who were going down what had happened to them, so that they might return to their villages, as it was imperative to seize this Indian, so that, on this ground, they might excuse themselves from going to the Dutch from fear of what might happen to themselves. ”

And then there is this at the bottom of that page :

“ On the 10th day we departed from Capachi — ”

the intervening period simply described his journey down the river —

“ and after passing some rapids, not of the largest, we passed the night at the mouth of the Creek Tupuro, having rowed ten hours' journey to the head of the Rapid Camaria — ”

that was the lowest rapid —

“ which is two leagues long, and ends at the mouth of the Cuyuni, a short distance, about a quarter of a league before the Cuyuni flows into the Masuruni, in the fork of which a Dutchman lives, named Daniel — ”

that was, Mr President, about the location of Kijkoveral; and here is a statement in the year 1789, showing what Dutchmen were there. There was a Dutchman there —

“ named Daniel, with four companions, very many negroes and Indian slaves, all his. From the mouth of this Creek Tupuro there is a road to the foot of the rapid where the Carib Manuyari has his house, and he it is who keeps up this road opposite Daniel's house. The tide reaches above this rapid. From this to the fortress of Essequibo there are only two floods on the southern part of the River Cuyuni. ”

What he means is that the Fort was down the river, — Flag island, where the administration at that time was located.

“ There is a road which comes out at the Masuruni, where there are some Dutchmen with a Carib village. We arrived at the said mouth of the Tupuro at daybreak.

On the 11th day I dispatched the corporal, three of the militiamen, and 15 Caribs to apprehend the Indian Manuyari, and we, with the others, remained to guard the canoes; and at 12 o' clock at night they returned with the said Manuyari, whom they found in his plantation 3 leagues distant from the port, having taken the Indian woman from Panapana, named Josefa, and ten others.

On the 12th day we departed from the mouth of the said Creek Tupuro on our return, not being able to delay longer in this place on account of having seized this Indian, and because the Dutch, Aruacas, and Caribs being very constantly engaged in fishing in the river Cuyuni, our voyage might have been discovered. We passed the night at the rapid of Tosqueñe. ”

That is the other rapid to which I referred a moment ago. All this shews that de la Puente, who had himself little knowledge of these rivers, and who was going there for the first time, did not understand at all what the real situation of the Dutch was, and had a fear which was not well-founded.

It is remarkable that he takes prisoner the Indian, who is stationed at the lowest falls by the Dutch as their sentinel, and we never hear of a complaint of that act, by Dutch authority, absolutely nothing done. Skipping a paragraph, the one below :

“ On the 27th I went up the Curumo with the Spaniards who accompanied me and nine Caribs — ”

showing the Caribs at that time were the subjects and submissive subjects of the Spaniards :

“ leaving the remainder at the mouth of the Curumo awaiting the canoes, for the pilots told us that we could only continue the river journey two days more. We only rowed seven hours this day. ”

That, Mr President, is the expedition which resulted in founding, three years later, an establishment of the Spanish in Curumo Fort, and it is the first extract which I have read which directly introduces us to that subject. But I think in order to appreciate the value of that fort, what it meant at that time, and what effect should be given to it today, it is necessary I should read a few extracts before this date, showing the first suggestion of a fort there, what its purpose was, a purpose that was always kept in mind by the Spaniards and a purpose which was given effect to finally in the founding of that fort.

The first of these will be found in the Appendix to the British Counter Case at page 203. It goes back to the year 1758 but it was as early as that, that the need of a fort was felt and referred to. This is a statement by Fray Benito de la Garriga, at that time Prefect of the missions, and I read the last paragraph :

“ From all the aforesaid I infer that there will never be a better occasion than the present for carrying out the establishment of the village which has been considered so desirable for closing the River Cuyuni, and preventing the enemies of the Missions from communicating along the other rivers. All the difficulty that may arise is overcome by granting ten soldiers, regularly, for the said village. ”

So that the first suggestion for the establishment of this, back in the year 1758, was for the purpose of remedying an evil known to exist, the Carib evil, the slave traffic, and it was to close the River Cuyuni that it was proposed to found a fort or post. Along the same line will be found another statement by Father Bispal, in the same year, in the same volume, page 199, just above F :

“ The Reverend Father Prefect, and the other fathers of these Missions, have been greatly pleased at your decision to place a Mission of Guaicas on the River Cuyuni, with a fortified house; and as soon as you obtain soldiers for the purpose, it shall be carried out forthwith and immediately, seeing that it is for the service of God and His Majesty. It will be a better site, apparently, for the village of Guaicas below the mouth of the Curumo, for this is a river which the Caribs are continually

navigating, and from it they proceed by land and enter the Yuruario, and from this they can pass to the Caroni — ”

showing that that suggestion of the establishment of a post there was for the prevention of these Carib raids into the Caroni. It was to keep a strategic point on that river. The next extract I shall read is in the 2nd Volume of the Appendix to the British Case at page 148, just below D.

Lord Russell. — In that volume you have just dealt with there is a significant expression there just above the passage you read :

“ We are in good case, Sir — ”

this is, as you see, ironical —

“ the Dutch advancing and gaining territory, while we are under orders to withdraw the Missions from those places at the Cuyuni; though we regard the order as suspended by your Excellency, and I doubt not that the Court will approve of your decision. ”

Mr Mallet-Prevost. — Your Lordship notices this is the year 1750, the very year the Spanish expedition went down and cut the Dutch out. I think that is enough answer to that.

Lord Russell. — No; but you see they retired and do not make good their position. That is what I draw attention to constantly. They make an onslaught secretly and quite justifiably from their point of view and make a successful attack and then retire.

Mr Mallet-Prevost. — But they keep the Dutch out. Did I not give the evidence of it yesterday?

Lord Russell. — You gave some evidence and I have not forgotten it.

Mr Mallet-Prevost. — These orders that were at that time given and which are there referred to for the missions not to extend were because of these Carib attacks and it was because these Carib attacks were being felt so much at this time that this expedition was sent to drive them out, and it succeeded in doing so, and it was because of that, in 1758 the suggestion was made, that some fort should be founded at some strategic point, the object of it was to control the district.

Mr Justice Brewer. — 1758 was the year of the trip down?

Mr Mallet-Prevost. — Yes.

Mr Justice Brewer. — This was before the trip was completed?

Mr Mallet-Prevost. — Yes; I only turned back to this because this is the earliest suggestion of the establishment of a Spanish fort upon the Cuyuni and I want to show the object of it. It was intended to stop this Carib business and to occupy a strategic point of control.

I refer to the 2nd volume of the Appendix to the British Case, page 148. This is a statement by Garriga, the Prefect of the missions :

“ It is very easy to close the port to the enemy so that neither the Dutch nor Caribs may be able to communicate by the Essequibo, Cuyuni, Yuruary and Caroni with the above mentioned nations by establishing a village if not exclusively of Spaniards at least of chosen Indians with a garrison of at least ten soldiers to permanently reside there within a fort sufficiently protected by swivel guns; this to be situated at the mouth of the Corumo or on one of the islands in the Cuyuni.

By this means the pass would be closed and the entrance to the Rivers Yuruana and Yuruary blocked thereby also closing the Corumo. This village would equally insure respect and greatly hinder the Dutch from carrying on their slave traffic in Tucupo on account of its close proximity and on account of the means of communication which would be established between the Indians of the village and the soldiers of the fort. This village would be of such great advantage that it would prevent the enemy from ever ascending by those rivers — ”

it was intended to control those rivers —

“ and the Caribs of Miamo, Carapo, and Cunuri from descending by them to Essequibo with slaves, and I believe they would then remain more secure in the Missions, as they would thereby be prevented from communicating with the Caribs of the Cuyuni and Essequibo. ”

It is perfectly clear that they were seeking a strategic point which would be an object of control. My next reference is to volume V of the Appendix to the British Case, on the same line, as to the purpose of this post. I want to show by overwhelming evidence what the purpose of it was.

Mr Justice Brewer. — I think that is obvious.

Mr Mallet-Prevost. — Well, I can simply give my reference to those passages. I think many of them are very suggestive, not only of that but of other things also, and if the Tribunal will bear with me I would like to read them :

The President. — Yes, make your choice of them.

Mr Mallet-Prevost. — Thank you. I come down now to page 85, two years before the De la Puente expedition, just above B. This is a statement by Father Mataro :

“ On the banks of the Yuruary there are woodlands fit for cultivation on both sides between the Yuruary and the mouth of the Cuyuni. Where the Cuyuni and Yuruan join there is a con-

venient site to build a strong house or post to stop the passage of the Indians so that they may not go to Essequibo, and to prevent the entry of the Dutch to these missions and savannahs. ”

Showing again the same purpose in the year 1787, and it points out what I mentioned a moment ago. There was a difference of opinion where that post ought to be located and here we have the first expression of opinion by one of the missionaries, an opinion different from that afterwards adopted, he thinking it ought to be at the Cuyuni and Yuruan which the Tribunal will see is very much further up the river but the purpose was the same. It was a purpose to control. There is another in the following year at page 63 of the same volume, a statement by Governor Marmion. I read from just below C :

“ This first settlement having been formed with the views stated, and with the object which shall be given more fully when treating of the defence, the colonization shall be continued in the interior of that peninsula with three, four, or more villages, and lastly with a villa of Spaniards on the banks of the Cuyuni nearly at its point of union with the Supamo, which will be most conducive in the said spot to the furtherance of the progress of the settlement, and to the protection of this approach to the missions, and the prevention, as already mentioned, of the escape of the Indians and their communication with the Dutch of Essequibo, and the penetration of the latter into their districts, and the prejudicial traffic in poitos, &c. ”

Showing precisely the same thing as the other passages. There is a foot note to this which I shall call attention to later because it points to the work done on the post. The foot note was added in the year 1793. It said :

“ From an extra-judicial report it is known that a beginning has been made of the foundation of the new town nearly at the point of union of the Cuyuni with the Orinoco. ”

That is wrongly put in this case, and I have the photograph of the original which shows it. There is one thing that I think it is well to keep in mind in reading these various documents that relate to the fort that was finally established there; and that is, the first intention, which, was not carried out, but which will explain some of the apparent descriptions was to establish a villa of Spaniards, and a mission of Guaicas and a fort, and a fort only was established, possibly the mission, the fort certainly. I do not think there was any villa of Spaniards, but those three things were certainly in mind.

The next extract is at page 66 of this same volume, and I read from just above B.

“ When this extension has been obtained and advanced within the limits proposed, from Carucima inwards, and the last “ villa ” of Spaniards has been founded in the spot above indicated, the result would be a barrier of great security against the incursions and prejudicial traffic of the Dutch ; ”

of course that traffic refers to the slave traffic.

At page 107 below D :

“ With reference to your Excellency’s despatch of the 25th February last, I have to state that, after having carefully considered the matter, it has appeared to me well to represent to you that the foundation of a formal village, or town, will never be substantial on account of there being no outlet for the produce whilst the foreign Colony of Essequibo remains, because the cost of its transport to the Capital or to the Orinoco would be more than what the people of the new foundation would be able to obtain for it. But at least it is very desirable and necessary to build a fort or castle to stop the invasions of the Dutch and the revolts of the Indians, and at the place which the officer, Don Antonio Lopez de la Puente, shall consider best adapted for restraining them. It is true, according to my information, that if the fort or castle is built in the same place, or site, as that proposed by the said Don Antonio Lopez, the Indians will still not be secured, as there remains to them the refuge of two or three rivers lower down, by which they can escape whenever the temptation presses them. ”

Showing that here the Prefect was not entirely satisfied that that was the best location, but showing all of these, whether missionaries or civil authorities, their thought was to get a strategic point on this river where it could be stopped.

Chief Justice Fuller. — Did Puente recommend that place?

Mr Mallet-Prevost. — Yes, he recommended the Curumo. The next is at page 110.

Lord Russell. — This shows what was done there.

Mr Mallet-Prevost. — Yes; I am coming to that very shortly. We have got now to the year 1789. This is from the Captain General of Caracas.

“ I return you the map relating to that district, as it came without the description or necessary explanation, so that you may arrange to have it extended by the party who drew it. For, although by means of the journal one might do it here, it is difficult and embarrassing, as I am ignorant of what you have

informed the King concerning fortifying the point or place which you consider most advantageous for covering our possessions and preventing contraband trade with those of the Dutch."

I will not read the balance of that, but it is all pertinent on that page. The next is at page 111, and I will only refer to it, it is not necessary to read it. It was for the purpose of stopping this slave trade.

Between C and D down to just below E, and then at page 112 below C we have this statement :

" In consideration of these reasons and the others which the wise penetration of your Excellency will deduce from the papers before you which I had the honour to transmit to you on the 10th July, 1788, I take the liberty of proposing to your Excellency the urgent necessity of now adding promptly two companies of infantry to this garrison and without any prejudice to whatever may be considered right in the future, and in regard to the artillery, putting it on a footing of 100 men. I also particularly advise that a town should be founded as quickly as possible in the fork or junction of the River Curumo with the Cuyuni. A beginning may be made with the escort fixed by His Majesty in the Royal Order referred to of the 22nd December, 1773, at thirty men; it would be well that they be married and militiamen, and at the same time, as they guard the Missions and attend to their duties under the command of an officer, they can also serve as settlers with the help which for this purpose the venerable community of the said Catalonian Capuchin Fathers should freely give, with a part of the 10,000 to 12,000 head of cattle which they offered to His Majesty. "

There is another reference on the next page which it is not necessary to read, it is along the same line, opposite A and B page 113, and then in this fifth volume page 74 there is a document relating to the following year, 1790, of de la Puente.

This is the report which he makes :

" Having, in conformity with your Excellency's orders, taken the command of this guard of the Reverend Capuchin Fathers of Catalonia, my residence being in the village nearest to the River Cuyuni, I have carefully examined, by this part of the River Cuyuni, by the Yuruary, in accordance with your Excellency's instructions the places most convenient and adjacent to the Cuyuni, for restraining and preventing the injuries which are caused to these Missions by the intercourse and communication of the Caribs reduced and not reduced, by way of the said River Cuyuni, which flows into the Esse- quibo, and with the Dutch of the latter River, I have to inform your Excellency that, in order to insure the rear and frontier

of these Missions against the Dutch, it would be very desirable to cut off the communication of the said Caribs by stationing a detachment at the mouth of the River Curumo which is the last of any importance in this part that flows into the Cuyuni, and less navigable, the said pass would thus be closed and the Indians of these villages (besides those who desert) would be prevented from going under malicious pretexts, or the pretence of visiting their relations, and conveying down stream cargoes of hammocks and other articles, by way of the said River Cuyuni to the Dutch of Massuruni and Essequibo."

Which shows there was a trade carried on by the Indians of the Missions themselves who went down to trade with the Dutch in Essequibo.

" In like manner a village of Guaica Indians may be established at the mouth of the Curumo; these are distant in the southern part of the River Cuyuni, from where they are now being taken for the Missions of Cura and Tupuquen, "

and so on. And the next page refers to the same subject, which it is not necessary I think for me to read : except just below C,

" I must not omit to inform your Excellency of the news (although not very certain) which I have received from those Indians recently arrived from the village of Guascipati. They say the Dutch, as the result of their exploration of the Cuyuni as far as the first habitation from its mouth, have placed an advanced guard in the place called Onorerama, 5 or 6 leagues up from the mouth of the Cuyuni. I state this in case it may be of use to your Excellency. "

He was evidently speaking here of what had come down to him as a tradition of the last location of the last post, because that Post was abandoned in 1772 and he is speaking in 1790, but the location he gives would either correspond with that last post or be even lower down.

" In like manner I have to communicate to your Excellency that during these last days, before establishing myself in the port of Cura, the Indian Guayari had gone down to Essequibo on the pretext of searching for some fugitive Indians from the village of Tupuquen — "

and so on ;

" On this account I consider it well to repeat to your Excellency that it is only by closing this pass of the mouth of the Curumo that these journeys to Essequibo can be stopped. "

In June, 1790 Marmion ordered de la Puente to make another survey because he wanted to be very certain of securing the most advantageous

place. That will be substantiated by the document which appears at page 114 of this volume 5, opposite D, but I shall not stop to read it.

Lord Russell. — Might we not now come to know what was done and when ?

Mr Mallet-Prevost. — I am coming to that, My Lord. I will give one or two references before I come to that, to make the matter complete.

Again at volume 5, page 116, is a further statement by the Captain General of Caracas, another in the third volume of the Venezuela Case Appendix page 401, and another which would seem to indicate that the fort had already been established, in the fifth volume of the Appendix to the British Case at page 140 B.

“ The fort and Spanish town ordered to be founded at the confluence of the Rivers Curumo and Cuyuni, joined to the escort of 30 men who were appointed to help the Missions of the Capuchin Fathers, will serve for the present to check the incursions — ”

and there we have again a word which characterizes the acts of these slave raiders —

and frequent influx of the Dutch from Essequibo and Demerari : it will be of use in gaining the confidence and friendship of the Indians not yet converted — ”

showing that its object was also to go beyond that —

“ and through them, for obtaining information respecting the intentions and movements of the disaffected ; it will afford better protection to the rear of the Missions ; and may, later on, be a very useful point for communication with the interior of the country, for exploring it, and for rendering the conversion and spiritual union of the natives easy to the missionaries — ”

and so on.

In the Venezuelan Counter Case, third volume page 336 is a series of important documents which relate to the actual establishment and existence of this. This is a document dated March 10th, 1792 and shows that at this date the fort had actually been established.

“ By the copy which I hereby send to your Excellency, as I also do to the Captaincy General, Your Excellency will be informed of the trouble occurring on the River Cuyuni, which flows into that of the Colony of Essequibo ; the news of the gathering of the Indians provided with fire arms and protected by an entrenchment of stakes on the island further down on the mouth of the river Mazaruni, which flows into the Cuyuni, needs confirmation ; but, notwithstanding, for the sake of precaution and for fear of what might happen, I have given my instructions for aiding, in

case of need, as far as present circumstances will allow, the Sergeant Commander, who is detailed in the stronghold or sentry-post on the Cuyuni River, charging him to ascertain the truth of the matter. In case our fears are realized it will be necessary to strengthen that stronghold, it being an open avenue for the Colony of the Essequibo and a road for the fugitives and for others who are not fugitives and wish to travel by the river to leave the place; it is also indispensable that some means should be devised for the subsistence of the troops who man this place, and to this end I make a suggestion to the Father Prefect of the Catalonian Capuchins of these Missions, in a letter dated February 22nd ultimo. ”

We have there the earliest positive evidence of the existence of that fort. The letter also throws light upon its intended scope, speaking about the Indians that were down at the mouth of the Massaruni.

Lord Russell. — It is curious language, the “ stronghold or sentry-post. ” That is a correct translation, I suppose.

Mr Mallet-Prevost. — Let me see what the Spanish word is, my Lord. The literal translation would be a stockade, we shall see further on that was a fort. Possibly when first occupied it was merely a stockade, and the fort may have been built a little later, it means a stockade or strong post, but they were there.

Now from page 338.

“ By your Excellency’s note of March 10th ultimo No. 44, and copies of notices addressed by the Prefect of the Missions of the Capuchins of that province, and the sergeant Commandant detached to the fort of the River Cuyuni, I am in receipt of the information of the flight of the Indians of the village of Cura and the neighboring missions, in number 800 or more. ”

Lord Russell. — The word there is the same.

Mr Mallet-Prevost. — Yes; this is the same year, my Lord.

Chief Justice Fuller. — “ Garita ” is used in both places.

Mr Mallet-Prevost. — It is “ destacado ”.

Chief Justice Fuller. — Is not “ garita ” fort or garrison?

Mr Mallet-Prevost. — “ Garita ” is a word which has various meanings, it is sometimes used in connection with the description of a Custom House. Of course, it has not that meaning here, I think what it means is a stronghold of some kind, and the word “ fort ” later on is used.

Lord Russell. — Has “ destacado ” anything to do with it, is it not detached?

Mr Mallet-Prevost. — I thought in the place where I used that before —

The President. — Have you a dictionary of Spanish? It is said Garita

is a *petite loge de sentinelle* and a *donjon*, meaning a strong fortification
Lord Justice Collins. — You have “ *case fuerte* ” first.

Mr Mallet-Prevost. — I do not think the exact translation of the word matters very much.

The next document is on the following page 339 about the middle of the page, and I want to take this in order of date. This still refers to the year 1792.

“ Considering that the blockhouse must be finished this time, and that there must remain militia-men there being at present four, I beg your Worship to inform me whether the provisions are to be brought down at the expense of the Royal Treasury or at that of the militia men, the transportation of the said provisions requiring peons from these missions as there are none in the Cuyuni, although it seems to me that it would be convenient to have here at least some families — ”

this is written from the fort itself —

“ Not only for the provisions — ”

and so on. And then on the next page :

“ And still more, not having anyone to send as messenger, although for the present there is nothing particular, yet news has arrived that in an island which is below the mouth of the Maseruni, there are various nations of Indians armed with fire arms and a stockade ; but I believe that they must have armed themselves in apprehension of an attempt to catch them. ”

The next one is at pages 340 and 341, and is a long letter which is of the same year and which is entitled

“ Orders and assistance sent by the Government to the Sergeant commanding the River Cuyuni. ”

I will not read it. It goes with the other documents to show the character and existence of these places at this time.

At page 153 of the same volume we have a tabulated account as to some disbursements in connection with this Cuyuni establishment, which throws some light on its character. There are three tables, the first, which speaks of “ The Royal assets of the Cuyuni ” (B) which speaks of “ Ordinary expenses of fortification ” showing if they were not already constructed, the fortifications were being built there; and (C) speaks of “ The Cuyuni settlement. ”

Next in order of date comes the note, to which I referred a moment ago, to Marmion’s report in the year 1793.

Lord Russell. — Does that identify the particular fort, or is it agreed that it relates to this particular fort?

Mr Mallet-Prevost. — There was no other fort on the Cuyuni, and we have been speaking about the orders sent to the Commandant on the Cuyuni, about the four men there. The whole thing is one story. If this was the only document in the case it might be said how could that be identified, but taken in connection with the other documents there is no question.

Mr Justice Brewer. — You do not claim two forts?

Mr Mallet-Prevost. — No; there was only one at the mouth of the Curumo.

Lord Russell. — This only speaks of it inferentially. (B) is :

“ Ordinary expenses of fortification. To cash paid labourer 7 pesos four Reals. To supplies from cash book to reimburse subministrations made to the negroes of Essequibo 202 pesos.

How much is a peso?

Mr Mallet-Prevost. — The Spanish dollar.

Lord Russell. — Is there no other account of the thing as perfected?

Mr Mallet-Prevost. — Yes, I am giving the evidence little by little, I have to take it little by little. If this were all I do not think that I would take the strong stand I am taking. But it is not denied, there is no question about it, the only question is as to the location of the fort, there is no question there was a fort there.

Lord Russell. — Yes; the site and the character.

Mr Mallet-Prevost. — Yes; I have just shown there were four men there, and I shall show by other documents what there was after.

(Adjourned for a short time.)

Mr Justice Brewer. — Before you commence, I want to put a question or two arising out of the colloquy which took place between you and Lord Russell as we were breaking up. I may perhaps anticipate what you are going to say, but as I understood you to say, just as we were breaking up, there was no dispute between you and your opponents that there was some kind of a Spanish settlement or post or something of that sort towards the close of the 18th century; but the matter of location and its derivation and the extent of the establishment was a matter of dispute. I have been talking with Lord Russell about something I find on this English map and he explains it by saying that at the mouth of the Acarabisi is a Venezuelan station. It is a recent station and has nothing to do with this?

Mr Mallet-Prevost. — Yes; nothing.

Mr Justice Brewer. — I cannot find anything on this map to indicate where they say this post or fort was.

Mr Mallet-Prevost. — No; whatever is in red in that map is not on the other. I say it is admitted and it is admitted in the Case or Counter-Case; I have not the reference but I can easily give it. Sir Richard himself, in opening the Case for Great Britain, admitted it and went into

some lengthy arguments to show that it was on the north side and not on the south side. I will deal with that when I come to the location.

Chief Justice Fuller. — The difference as to the location is whether it is on the north or the south side?

Mr Mallet-Prevost. — Yes; that is all.

Lord Russell. — Is it not more than that? The particular spot is not agreed?

Mr Mallet-Prevost. — Yes; it is agreed at the Curumo.

Lord Russell. — Yes; in that neighborhood I know.

Mr Justice Brewer. — Is it agreed that it was at the junction or near the junction with the mouth of the Curumo?

Mr Mallet-Prevost. — Yes; it is.

Mr Justice Brewer. — You have all agreed the Dutch post in 1755 was at Tokoropati?

Mr Mallet-Prevost. — Yes, the first site.

Mr Justice Brewer. — Now it is agreed in the case that the Spanish post or fort or establishment whatever it is (I do not want to characterize it) was at or near the junction of the Curumo?

Mr Mallet-Prevost. — It is; and if I am not correct in that statement the Attorney General will kindly correct me.

Sir Richard Webster. — It is; and as far as we can trace it, it is on the north side of the Cuyuni and at the junction.

Mr Mallet-Prevost. — The only question is whether it is north or south.

Mr Justice Brewer. — I was trying to get some stable ground.

Chief Justice Fuller. — Your statement at the time was that there was a difference of opinion as to the location.

Mr Mallet-Prevost. — That is all.

Chief Justice Fuller. — I know; but you did not add that the difference was if it was on the north or south side.

Mr Mallet-Prevost. — I ought to have done so, Chief Justice, but I thought it was so clearly before the Tribunal, as to what the difference was, that I was not as accurate as I should have been. I will show in a few moments it was on the south side.

The President. — I cannot understand what is the difference or the importance if it is on the south side or not.

Mr Mallet-Prevost. — I do not think, your Excellency, that it is a matter of very much importance either way, but the fact that it is on the south side of the Cuyuni goes to negative an allegation in the British Case that the Spaniards never passed the Cuyuni at all, and I will show they did. It is important also, in this connection, that the Schomburgk line is a line which runs down the Acarabisi along the Cuyuni and leaves the site of that fort in British territory if it is on the south side.

The President. — I do not understand it.

Mr Mallet-Prevost. — The Schomburgk line leaves the site of that fort on British territory.

The President. — That you did not explain last night.

Lord Russell. — You do not mean along the Acarabisi, do you?

Mr Mallet-Prevost. — Yes, my Lord; after it leaves the Imataca ridge it is what we call the expanded Schomburgk line, and runs along the Cuyuni, leaving this fort on the south side, and runs to the Uruan. In that aspect it is exceedingly important as to which side of the Cuyuni the fort is on.

Now when the Tribunal adjourned I had just called attention to certain accounts in the year 1792 showing expenses for the fortifications and expenses for the settlement of Cuyuni and in view of the earlier documents and in view of the later documents and in view of the admission of Great Britain as to the place where this was (without saying if it was the north or south bank) there is no question that these accounts referred to a post at this place and it speaks of it as a fortification and that is what it was. It was a fort. I, just at the close, referred in order of date to the note in Marmion's report, the report being dated 1788, but the note being dated 1793 and the photographic reproduction of that note will be found in the third volume of the Counter Case of Venezuela; page 146, it is the same I referred to a few moments ago.

That refers to the year 1793 and Marmion there states :

“ From an extra-judicial report it is known that a beginning has been made for the foundation of the new town nearly at the point of junction of the Cuyuni with the Curumo. ”

In order of date is another reference to this post, in 1796, to be found at page 339 of the 3rd volume of the Venezuelan Counter Case Appendix. I read a document which was an enclosure of the date of 1793 but this document is dated 1796.

Chief Justice Fuller. — That is the date of the certificate of the papers — the expediente.

Mr Mallet-Prevost. — Yes; but this a statement of the Governor General referring to the Spanish town or fort :

“ I enclose to your Excellency the papers regarding the establishment of [the Spanish town on the fork or union of the Rivers Cuyuni and Curumo, having for defence a stronghold or fort and a town of Guaica Indians — ”

the location being distinctly referred to in that year of 1796.

At page 348 of the same volume, also in connection with the year 1796, we have a reference to the same place :

“ I hereby return to Your Excellency the papers which your Excellency enclosed in the note of the 8th in regard to the establishment of a Spanish town and stronghold on the fork or union of the Rivers Cuyuni and Curumo. ”

Mr Justice Brewer. — Is No. 471 on the next page the matter which is enclosed ?

Mr Mallet-Prevost. — No, I am going to refer to the one on the opposite page, in a moment, which relates to the year 1800, some four years after.

The next in order of date will be found at page 155 of the same volume, Document No. 81, where there is another account of the military Commandant of the Cuyuni, which refers to this fort and no other as there was no other in that region and then we come back to the one which Mr Justice Brewer referred to a moment ago.

Sir Richard Webster. — I do not think there is anything about a fort in that document on page 155.

Chief Justice Fuller. — “ The royal assets of the Cuyuni. ”

Mr Mallet-Prevost. — And “ the Military Commandant of the Cuyuni. ” Do you see that?

Sir Richard Webster. — Yes; I see that.

Mr Mallet-Prevost. — Now at page 349 we have first the Spanish and below that the translation of a statement showing the effective forces of the troops in arms at this present day. That is 1800, and where there were stations, and after enumerating a number it states in the Cuyuni one sergeant, eight corporals and soldiers, making a total of nine. That gives the distribution. There were also 357 disposable men in the provinces and of those, nine were stationed in this fort in the Cuyuni. It continued in existence for a number of years. It is impossible to say how long but certainly as long as there was any need for it. It was there in the year 1809 as will be seen from a statement in the 2nd Venezuelan Case.

Lord Russell. — What does that last item mean. I do not understand it, on page 349 under the head of missions, two soldiers.

Mr Mallet-Prevost. — They are soldiers scattered about in the various missions, sometimes more and sometimes less.

Mr Justice Brewer. — They were not scattered very much.

Mr Mallet-Prevost. — No, but Lord Justice Collins referred to 18 soldiers yesterday, and it shows very clearly that in 1800, owing to the establishment of that fort on the Cuyuni lower down, the need for any guard in the missions had entirely disappeared and consequently was reduced.

Lord Russell. — That is rather significant.

Mr Mallet-Prevost. — Of course it is. It shows that the fort was serving its purpose.

Lord Russell. — I was rather inclined to suppose that some of these other soldiers were in connection with the missions. You say there were none except two in the whole province at that time.

Mr Mallet-Prevost. — I made my answer, my Lord, while I was looking for the reference, but if your Lordship will refer me to it — I suppose it refers to the soldiers at that time actually in the missions. Prior to that time the records show a larger number of soldiers in the missions and by this time the fort had been in existence for a number of years on the Cuyuni and the definite disposal of the forces in the provinces had

been made. We see there were 357 definitely distributed and whereas in former years there had been a necessity for the presence of soldiers in those missions, now the necessity was passed and the fort was serving its purpose.

At page 486 of the 2nd volume of the Venezuelan Case, we have the list entirely with regard to this fort. The fact that there were only two soldiers in the missions seems to me the most eloquent commentary that can be made on the success of this fort. For 100 years those missions had been suffering from Carib attacks. For fifty years the fort had been planned and at last it had been carried out and it is a most significant fact that from the day that that fort was established we hear nothing more of Dutch or Carib attack. It is the end of it. There is not a scrap of evidence anywhere and it proves that that fort served its purpose. It had controlled that region and from that time there is no mention of a Dutchman trading or slave raids or anything else in that place.

Mr Justice Brewer. — From what time?

Mr Mallet-Prevost. — 1792; and here we have in 1809 the post still in existence — at page 486 of the 2nd Venezuelan Case.

Mr Justice Brewer. — With eight soldiers?

Mr Mallet-Prevost. — Yes. One sergeant, one corporal and six soldiers.

Lord Russell. — At that time none in the missions?

Mr Mallet-Prevost. — They had all been retired. There was no need for any, my Lord.

Ever since Spain first came there — 1680 I think was the earliest document I referred to — when these Carib attacks were pressing on Spain and Spain had been dealing with them from that time on, those Caribs had been driven from pillar to post, some of them had been civilized and the rest driven forth and this post was established on a strategic point for the purpose of control and it did control and there is nothing more of the Caribs thereafter.

In the year 1807 the slave trade itself, by the British then in possession of the Essequibo colony, was abolished, and that is the end of it all; and there was no further necessity for guarding against Carib attacks. It shows the complete triumph of the Spanish policy, with these Caribs, carried on for two centuries.

Lord Russell. — You give the life of that post how long?

Mr Mallet-Prevost. — From 1792 until at least 1809; that is to say practically till the revolt of Venezuela from Spain which was in 1810. That post lasted there and served its purpose and it was there during all those years.

Now I want to say a word with regard to its location. The Attorney General, in speaking about the location of the Post, appealed to two or three maps in support of his position, and I want to glance at those maps before I refer to the evidence which contradicts him. The first of those is a map, the author of which is unknown, but it is copied by Sir Robert

Ker Porter. It is in the port folio which contains the British maps to the British Counter Case called; Map N° 4 by Sir Robert Ker Porter.

As I say, it is not known whose map it is but it is stated that it is a copy and on the same scale, of a rough map. It is made by Sir Robert Porter who was then the Minister at Caracas presumably from a sketch of an earlier date. There is nothing to show the other way but there is plenty to show that the author, whoever he was, was very ignorant of this particular region, and if we are to accept the statement of the Attorney General as to the wonderful exactness of the surveys of the British map, I will call the attention of the Tribunal to the way in which the river Curumo is placed, and ask the Tribunal to compare it with a river not given here as the Curumo at all, but as the Botonamo. The Curumo was a river very well known to the Spaniards; it was a river about which there had been a great deal of talk with reference to the establishment of a fort, called at times Curumo and at times Curiamo, and as my learned friend appeals to the accuracy of a map which gives a wrong name to the place near which it locates this fort. —

Lord Russell. — He marks the Curumo as a tributary of the Botonamo instead of the Botonamo being a tributary of the Curumo.

Mr Mallet-Prevost. — Which does not show a great deal of knowledge, at all events, my Lord.

Lord Russell. — That applies to many of the maps.

Mr Mallet-Prevost. — Yes, my Lord.

Sir Richard Webster. — It was often called Botonamo at this date.

Mr Mallet-Prevost. — Well, all I can say is that on all these maps and in all the instances which I have been citing yesterday and to-day it is not referred to as such, it shows that only small reliance can be placed on the location of a fort when the river on which it is placed is not properly named.

Lord Justice Collins. — What is the point upon it?

Mr Mallet-Prevost. — It is on the north side; that is the only difference, my Lord.

Lord Russell. — He does seem to give a pretty accurate idea of the various missions then existing.

Mr Mallet-Prevost. — Yes; but a total ignorance as to this particular river and region. It gives a wrong name and it gives a wrong geography. Bauza is in the British Counter Case and is a map which is also more than inaccurate. Will the Tribunal kindly turn to this. It is called N° 5. The geography is absolutely incorrect here but I call attention to the fact that the person who made this map locates the fort on it near the Curumo but on a river which I think the Attorney General said was the Uruan, beyond its junction with the Yuruary. As we are agreed, both our friends on the other side and ourselves that this fort, whether it was on the north or the south side, was in the immediate vicinity of the Curumo, it seems rather strange to appeal as a matter of accuracy to a map of this kind which shows some

sort of fort at a place many miles west and not on the Cuyuni at all.

Lord Russell. — What is the evidence that you have?

Mr Mallet-Prevost. — I am coming to that and it is evident that it has been utterly disregarded and overlooked by the Attorney General. It is most important evidence. There is one person on whom our friends rely a great deal and to whose personal knowledge of these matters I now appeal and that is Schomburgk.

Lord Justice Collins. — Where is the fort on this last map?

Mr Mallet-Prevost. — I do not wonder that your Lordship cannot find it.

(Mr Mallet-Prevost pointed it out to His Lordship)

Now I desire to call attention to the seventh volume of the Appendix to the British Case, page 60. Schomburgk was in this region and he made the maps which have been relied upon by our friends on the other side. It is unfortunate that, upon the one point which is against them, they have thrown those reports aside. I read from the bottom of page 60 :

“ I expect likewise that the Venezuelan Government will oppose the right bank of the River Cuyuni — ”

Schomburgk is here writing to Lord Aberdeen as to the line known by the name of the Aberdeen line which left this on the British side and he says :

“ I expect likewise that the Venezuelan Government will oppose the right bank of the River Cuyuni being taken as a boundary line from where that river receives the Acarabisi to its source, and from thence to Mount Roraima, in consequence of the Spaniards having had a fortified post, called Cadiva, opposite the mouth of the River Curumu. Her Majesty's Government may easily meet such an opposition by drawing their attention to the circumstance that the Dutch possessed a fortified post where the River Barima falls into the Orinoco — ”

and so on.

Showing, when this proposition of Lord Aberdeen was brought to the knowledge of Schomburgk, he criticised it on the ground that he expected the Venezuelans would oppose it because it gave to the British the very site of the fort; and Schomburgk made a map, which was published recently in the British Atlas, but which, no doubt through some unintentional oversight, has left out for this purpose this most important feature. The map I refer to is the physical map No. 47 in the British Atlas, and I will ask the Tribunal to look at this map as it is somewhat important. On the right hand side of the Curumo River are the words “ in rns ” which undoubtedly means ruins. I have asked our friends on the other side to be good enough to let us see the original and they have kindly placed it at our disposal; and I want to call the attention of the Tribunal to it

because it shows the conventional signs of ruins on the other side of the river. This is the original of which that is a reproduction. There are four dots on the other side of the river which show the location of the ruins and which, as I say, have unfortunately been omitted from the reproduction in the map in the British Atlas. So that we have Schomburgk's statement, in his reports on the one hand, that it was there and we have on the other hand his map which shows it to be there. Schomburgk is a witness to the fact; he has depicted them and he has reported them.

Lord Russell. — Does he put them on the south side?

Mr Mallet-Prevost. — I think you will see the mark of the ruins there, four dots; the words are on the other side but the mark is there and he so states in his report.

Lord Russell. — Oh yes, that is quite clear.

Mr Mallet-Prevost. — This has been properly reproduced in other maps.

Chief Justice Fuller. — It is reproduced here, I think, if you put a glass on.

Mr Mallet-Prevost. — Possibly, but I was not able to see it. I think that puts the matter beyond doubt.

Lord Russell. — Schomburgk describes it as being opposite the Curumo.

Mr Mallet-Prevost. — The colonial map and the others make it clear. I can cite a number of maps, published under the authority of the British Government, which place it on the south side, and in view of Schomburgk's statement it is useless I say to discuss which side of the river that fort was on.

Now I said a moment ago that the slave traffic had been stopped in the year 1807. Before I leave the subject finally I want to read one passage from the 5th volume of the Appendix to the British Case relating to the year 1810, which simply goes to show the correctness of the position I have taken as to the relations between the Dutch and Caribs, and with regard to these Carib attacks upon the missions through the 18th century. I read from the bottom of page 194 of the 5th Volume just below F. This is an extract from the proceedings of the Court of Policy in the year 1810 when the British were in possession.

Mr Justice Brewer. — Were the British in possession then?

Mr Mallet-Prevost. — Yes; the Treaty of London vested the title in them in the year 1814. They were in possession from 1803; from 1803 to 1814 it was in British hands, and in 1814 it was confirmed to the British by the Treaty of London. That is one reason why this record instead of being in Dutch is in English :

“ His Excellency was not, however, of opinion that their settling in the neighbourhood of the Colonies should be encouraged, or their alliance for the purposes of internal defence be

courted, as their restless disposition could not but make them very troublesome neighbours, and as the assistance which the Indians settled in the back lands were always ready to afford was fully sufficient for such purposes as the assistance of Indians could be required for; his Excellency further observed, with regard to what this Chief stated of his nation having formerly been of great use to the Colony that this certainly was the case at the time it was lawful to employ the other classes of Indians as slaves, when these Caribian Indians were very useful in procuring them, but could not be applicable at this moment, when that trade was prohibited."

So long as the Caribs could be used for the purpose of catching these slaves they were very useful to the colony. Their merchandize was bought by the Dutch and it was the Carib attacks upon the missions that the Spaniards were fighting. The Spanish fort was located on the south side of the Cuyuni, opposite the Curumo, and it stopped forever those attacks upon the missions. A few years later the trade was abolished by the British and having no further use for the Caribs this is what the Court of Policy said in 1810. Yet it is through these same Caribs that it is attempted to derive a Dutch title.

Now, Mr President, I want, before I close, to answer a question which was put to me by Lord Justice Collins shortly after I began my speech, as to the cooperation which there was at different times between the Spaniards in different parts of the northern part of South America. I am not going to read, for I shall not take the time to do it, but to refer to a number of passages where this cooperation is either recorded and referred to as a fact or where it is referred to as something which is ordinarily to be expected in the course of the exercise of Spanish jurisdiction in those regions. The first reference to it is in the first volume of the Appendix to the British Case at page 49.

Lord Russell. — This is to meet the suggestion that the apparently helpless condition of Santo Thomé was not so helpless as it looked?

Mr Mallet-Prevost. — Precisely, my Lord, and I will point, in this connection, to the difference there was between the Spaniards at Santo Thomé and the Dutch in the Essequibo. From the time that the Dutch established themselves there until the time that the colony became vested in Great Britain there is no record of any Dutch assistance coming to the colony of Essequibo from any other Dutch colony. The Essequibo colony, as I pointed out, was a rival of Surinam and of the other colonies on that coast and there was no cooperation between them; Essequibo had to depend upon itself alone for what it had to do.

Lord Russell. — Or would get it direct from the parent country?

Mr Mallet-Prevost. — In the same way as Santo Thomé got it direct from Spain. I speak of the force there. They had great difficulty to get help from the mother country. The Tribunal will remember the com-

plaints of Gravesande of the men sent out, and the men being Roman Catholics would desert to Orinoco and so on. I will refer to the comparative strengths directly, but before that I want to answer Lord Justice Collins and to say from what place the Spaniards could or did in fact draw reinforcements. When I say "could" I mean documents that refer to those places which were naturally connected, in the administration of the Spanish policy, with Santo Thomé. The first is in the first volume of the Appendix to the British Case at page 49 and it is a reference to the Audiencia of the New Kingdom of Granada and it was ordered that Captain Lezama should go to the Audiencia of the New Kingdom of Granada for the purpose of giving an account of the event and request that the help of some soldiers should be sent for its defence. In the same year 1621 in the 1st volume of the Appendix to the British Case at page 50, opposite C, is a reference in the same way to Puerto Rico, the Havannah, Carthagena and Santo Domingo :

"It is now nine months since Captain Juan de Lezama informed the Council and made a report on the matter and begged that for its remedy 150 soldiers might be sent for its garrison; and that they should be drawn from the garrisons of Puerto Rico, the Havannah, Carthagena and Santo Domingo."

There is another reference to Puerto Rico in the same volume, 1st Appendix to the British Case, page 51, relating to the year 1631. There is a reference to Santa Fe in the 1st volume of the Appendix to the British Case, page 70, E and F, and page 71, A.

In the year 1638 there is a reference to the new Kingdom of Granada in the first volume of the Appendix to the British Case, page 117 from D to E. That was the expedition of Maldonado in the year 1638, which took to Guayana 200 men. In 1662 there is a reference to Venezuela, Cumana, Barinas and Trinidad. That reference will be found in the first volume of the Appendix to the British Case, page 155, D to E. Also in the year 1662, there is a reference to Santa Fe again in the first volume of the Appendix to the British Case 156, F, and 157, A. And another reference to Santa Fe is in the first volume of the Appendix to the British Case page 159, A-B, and another one at 161 from C to E. There are also a number of references to the receipt of troops from Spain, but it is not necessary to mention those.

In the third volume of the Appendix to the British Case, page 8, A and B, there is a reference to Cumana and to Barcelona, relating to the year 1740. In the third volume of the Appendix to the British Case, page 8, D-E, there is a reference to Barcelona, Iragua, and to Pao, and another reference to Pao in the year 1763 at page 198, F, and 199, A. There is another in the 4th volume of the Appendix to the British Case at page 113, D, another in the year 1777, in the 4th volume of the Appendix to the British Case page 182, C, which relates to Caracas and to Cumana; and

then, as throwing light upon the relations of the Orinoco to the region beyond, I want to ask the Tribunal to glance at two maps; I have selected them because they represent periods which are about a century apart. One is N° 11 in the British atlas, relating to the year 1690. It is a Map by Visscher, which shows the general relation of this region to that which lay west, to Puerto Rico, to Cuba, and to the other Spanish possessions on the North, and shows also a large number of named places, many of them of course Indian settlements but nevertheless Spanish places which were in the region between the Orinoco and the Isthmus of Panama. That was in the year 1690, but I also call attention to map N° 27, which comes a century later, in the year 1775. It is a map by Olmedilla, a Spanish map.

Lord Russell. — Was the last a Spanish map?

Mr Mallet-Prevost. — No; I think a Dutch map. This map is N° 27. It is a Spanish map, and though it contains a great number of the names of Indian towns, I want to call attention to the apparently dense settlement that there is north of the Orinoco and even south of it. If the Tribunal will see, the region between the Caroni and the upper Orinoco, how that whole place had been peopled by Spaniards, and from all those places Santo Thomé could draw upon occasion. I have given those references; now I am going to show the strength of Santo Thomé.

Chief Justice Fuller. — Let me ask you a question upon that, if it will not disturb you. The historical part proves that there was a Viceroy here. All this territory was under the Viceroy of Peru. That was long before. Did they not afterwards create a Viceroyalty of New Granada or some such name?

Mr Mallet-Prevost. — Yes.

Chief Justice Fuller. — Located at Bogota, or somewhere there?

Mr Mallet-Prevost. — Yes.

Chief Justice Fuller. — I asked you some time ago when the Captain-Generalcy was established, having this notion in my mind. Now you affirm the proposition that Guayana was under the supervision —

Mr Mallet-Prevost. — No, I did not state that.

Chief Justice Fuller. — Might call upon them.

Mr Mallet-Prevost. — I said that there was a co-operation here between them, and was not limited by any boundary between Captaincy-Generals. I could mention Puerto Rico and Havana, and there were orders from the Home Government of Spain to these places to help each other.

Chief Justice Fuller. — Your proposition is, that Guayana did not have to depend upon the soldiers immediately there, but could call upon the back country?

Mr Mallet-Prevost. — Yes.

Chief Justice Fuller. — Did they call on the Viceroy of that region?

Mr Mallet-Prevost. — Yes, and not only on the Viceroy of that region

but on the Viceroy's of other regions when they felt disposed. The very expedition of Maldonado went from New Granada in 1638 with 200 men. I have mentioned today in some of the documents that I have read as the Tribunal will remember that some of the soldiers that were sent were to be charged upon Santa Fé. I called attention to that this morning. There was not a great deal of need to send for those; and now I am going to refer to the actual strength of what that was, leaving the question of co-operation between those various garrisons. I have gone as thoroughly as I could through the evidence for the purpose of gathering a few general statistics as to the comparative strength of the Dutch and Spanish, taking the whole Dutch strength of Essequibo and Demerara, and limiting the Spanish strength to nothing but Santo Thomé and its missions. I am presenting on the one hand *all* of the Dutch strength and on the other *only a part* of the Spanish.

It is impossible to give full statistics because the statistics are not in the evidence. But there are certain suggestive passages and there are certain facts, though [we cannot state positively, with regard to certain years, and I am going to give them as fully as the evidence will allow me to give them without reading the passages but referring to them and simply stating the facts.

In the year 1609 there is a statement, in the British Counter Case Appendix page 8 opposite D, that in Trinidad there were thirty-five or forty men and at Santo Thomé about sixty men. Of course this is a very small number. I might preface what I have to say as to this whole thing by this statement that in those days any settlement was a small settlement. Those settlements were settlements that grew; the Dutch at that time, and I shall show what they had, not only then, but one hundred years later, were little bits of settlements with a few men. It was all that could be counted on. Of course today sixty men would be utterly insignificant, but we are dealing with those and I am going to compare the two as far as I can. In 1629 according to a statement of De Laet (the reference is given in a footnote in the Venezuelan Case from his description of the West Indies published in Leyden in 1630) he speaks of Santo Thomé in the year 1629 as consisting of 130 or 140 houses, a church and a convent. Now Essequibo began in the year 1626 with one or two men lying in the river. That is an expression used in the evidence. Van der Goes was sent to lie in the river and that is the reason I use that expression. There are extracts which, at times, show that Santo Thomé was almost depopulated and I will refer to one of those; but I also call attention to this fact, that in 1629 Santo Thomé was attacked and it was in that year that there were from 130 to 140 houses and people were killed by the smallpox or some plague that was raging there — a large number of people died.

Lord Justice Collins. — What year did De Laet write in ?

Mr Mallet-Prevost. — 1630; and in the year 1634 there was a considerable come down in Santo Thomé, from 1629. He says :

“ I found inhabitants who do not now exceed forty, poor and destitute through loss of the trade in tobacco and produce by which they were supported, ”

and so on. That was five years after the attack. That is in the British Counter Case Appendix, page 10 C. Then opposite E there is a reference in the same year to Trinidad and that was also after an attack when there were twenty five families. In the year 1637 we know the attack, that the Dutch made upon Santo Thomé and upon Trinidad and in that year there were left some twenty eight or thirty persons, inhabitants of Trinidad, and a few only in Santo Thomé after that attack. As yet I have nothing to offer on the side of the Dutch. That is in the First Appendix to the British Case, pages 90 and 91.

In 1640, the statement is (B. C-C., App. p. 16, A) that at Santo Thomé there were sixty men and in Trinidad thirty men, besides others sick and disabled and so on; and it refers to the attack that had been made and says :

“ they retreated to their fortresses leaving the town infected by a very severe epidemic, so fatal that those attacked lived barely twelve hours, and many perished by it. In a town containing only sixty men so many hardships, plunderings, and illnesses, as it is the most unhealthy district in the Indies, will have made a great gap. ”

At that time in 1640 there was only a handful of traders in Essequibol

In the year 1657, to pass beyond the Treaty of Münster, we have the record of the first free colonists going to Essequibo. They were twelve persons and it is well as far as we can to keep in mind here the difference between the garrison and the place and the people of the place. There were other Dutchmen in Essequibo at that time, the direct employees of the West India Company; but these twelve persons went here as the first free planters. I want that fact recalled because there is a difference between the garrison and those living there. That is in the Venezuelan Counter Case, volume II, page 76. In the year 1649 there were sixty-six men in Trinidad. That will be found in the 1st volume of the Appendix to the British Case, page 158, from D to E.

In the year 1662 there were one hundred and forty residents at Santo Thomé and Trinidad and one hundred capable of bearing arms.

I want to call attention here to the use of the word *residents* because it is a word which at times has been properly translated and at times wrougly translated in the Appendixes to the British Case. There are various words in Spanish which may describe a person living at a place, or an inhabitant. There is *habitante*; and also a word used in one of these documents, *morados*, a person staying there; but there is another word

which is *vecino*, which in some places is properly translated “ residents ”, that is, people that have a legal residence at the place.

Lord Russell. — Is not that a neighbour?

Mr Mallet-Prevost. — No; it is not, my Lord; it is a legal resident of the place. It is clear from some of the references I shall give, when *vecinos* is given, it means the men, the legal residents, not the population. In this particular passage in the 1st volume of the Appendix to the British Case, p. 153, opposite C, the word is properly translated “ residents ”. In regard to that they say that they do not reach one hundred and forty residents, between old and young, and one hundred capable of bearing arms. That would indicate the one hundred and forty did not include all the inhabitants because, if the women and children were included, it would not be expected that there would be one hundred capable of bearing arms.

Then, in the year 1671, there is a statement in the British Counter Case Appendix, page 44, B, to the effect that the town of Guiana which contained ten inhabitants —

Lord Russell. — This dictionary, which the Secretary of the Commission has kindly given me, oddly enough gives this meaning which I have suggested to *vecino* : *Voisin qui demeure auprès*.

Mr Mallet-Prevost. — It does not quite mean that, my Lord; because the root of the word is the same as neighborhood; a *vecinidad* is a neighborhood but a *vecino* is a legal resident. There is no question about that. It is different from *habitante*; it is a *habitante* who has a legal right.

Lord Russell. — It is a habitant who is domiciled.

Mr Mallet-Prevost. — That is what I say, it is a habitant who has his legal domicile there.

Now I was saying, in the year 1671, there is a reference in the British Counter Case Appendix, B, where it is suggested that there are ten inhabitants in the City of Guiana and the word used in Spanish is *vecinos*. The city was at that time at about its lowest ebb, and the Governor in giving this fact states that the inhabitants had been wandering off from there and deserting the place and going to Venezuela. He mentions there are ten of these *vecinos* left which would probably mean ten families; but *that* he gives apart from the garrison, the garrison being referred to as consisting of forty-seven soldiers. It is just as important to make the distinction here between the military and the rest of the population as it is to make it, in the place where I did make it, in connection with the Essequibo. There were twelve free colonists that went there and they did not represent the total population, neither did the ten here. I want to be fair about that.

In that same year there were eight *vecinos* in Trinidad and we have the fact that it was in the year 1686, speaking of the colony of Essequibo, that that colony was thrown open to planters and that planters first began to go there. Up to that time its population must have been exceedingly

insignificant. We have no data except that which I have given from which any estimate may be made but in the year 1689 we have a statement as to the number of soldiers (which will be found in the 2nd Appendix to the Venezuelan Case at page 59) showing thirty one men in all, in Essequibo, in that year.

In the year 1689 there is another statement which is made at a later time, in October, and the first was in January, and shows practically the same state of affairs :

“ We are now, thank God, in a condition to resist the enemy with our forty able-bodied men, all strong negroes in this fort with a thick stone wall and heavy palisades a foot thick erected outside against the wall. But the great scarcity of provisions forces us to let ten or twelve men seek their sustenance outside of the fort down the river where they also serve as a look out watch. ”

That is in the 2nd Venézuellan Case Appendix, page 62. It is only by putting these facts, as we can gather them, opposite each other that we can form any estimate on the question of strength, always keeping in mind, on the one hand, that I give the whole Dutch strength and on the other hand only a part of the Spanish.

In the year 1691 the muster roll of the West India Company showed only forty three men. That will be found in the 7th volume of the Appendix to the British Case, pages 149 and 150.

In the year 1700 the muster-roll of Essequibo shows only sixty eight men (to be found in the 7th volume of the Appendix to the British Case, page 150 C to 151 F).

For a number of years there is practically nothing except this passage, which I give for whatever it may be worth—a statement by the Commandeur in Essequibo (in the 2nd volume of the Appendix to the British Case at page 18) where he says :

“ Since the Spaniards are making themselves so formidable by the collection of a considerable number of troops, and we on the contrary are very weak here. ”

I give that for what it is worth; no figures are given with it but it is an expression of opinion by the Dutch Governor.

I come now to the year 1750, and according to a statement (which will be found in the 2nd volume of the Appendix to the British Case, page 194, E, F) there appears to have been in Essequibo at that time thirty nine soldiers besides militia. There is a statement with regard to Guiana at that time including the missions, which is significant, and is to be found in the Appendix to the British Counter Case at page 191 B :

“ In the aforesaid port of Guayana is situated the castle of San Francisco de Asis (which is really an unfinished battery)

with thirteen guns of the calibres of six, eight, and twelve, some swivel guns, and a company of a hundred men, including Officers, Sergeants, and Artillerymen. Its object is to prevent the passage of any vessel that tries to enter for hostile purposes, or to carry on illicit trade with the Indians and the few Spaniards who dwell on those banks, or with those who come down from the adjoining provinces of Cumana, Venezuela, Varinas and the kindgom of Santa Fé, of which this port is the key. It likewise serves to protect the Missions of the Jesuit Fathers, 120 leagues distant from Guayana up the river, where the first met with bears the name of Cavueta, and to defend and assist the Missions of the Catalanian Capuchin Fathers. The latter consist of eleven villages, beginning with that called Suay, which is three leagues from the town of Guayana, and the rest extend along those lands, or the slope of the ranges, to three, six, seven, and nine leagues, one from another. They contain in all 29 300 souls, including 500 Indian Bowmen able to fight, without counting 125 others with their families who are said to be in the new Carib Settlements of Paz.

“ These lands the said friars reclaim and cultivate with great zeal and labour; and it is likewise due to their example and encouragement that cattle abound in those fields for they started with a cattle farm where there was neither cattle, birds, nor other flesh, except game, and consequently all had to be acclimatized to the country. ”

And the last of that passage has been read in another connection.

I give it now to show the condition of Guiana, and this begins in the year 1750, when, so far as we can tell, there were 39 soldiers in Essequibo.

In the year 1764, the monthly report of the state of the garrison in Rio Essequibo and Demerara, together with the dependent posts everywhere (given in the 7th volume of the Appendix to the British Case at page 164, opposite E and F) shows a total of 83 men.

In the year 1766, the list of the garrison in Rio Essequibo and Demerara in the same way shows 65 men. That is in the 7th volume of the Appendix to the British Case at page 165.

In the year 1769, this is what the West India Company said. It is dated the 21st of August, 1769, but it refers to the year 1768. The reference is to the second volume of the Venezuelan Case at page 207 :

“ Firstly, as for the soldiery maintained by us for the protection of the Colony, the number of those present in the Colony (according to the so-called muster roll drawn up on the last of December, 1768, and sent to us, copy of which we have the honor to inclose herewith, sub Litera B) is now unusually

small, the garrison having been so greatly weakened through discharge of several who had served their time, through the death of others and the desertion of many, that no more than 39 common soldiers are actually available. ”

This was 120 years after Treaty of Münster, in the year 1768.

“ Adding to these the Captain, Lieutenant, Commandant, the Adjutant, in command of the lookout-watch in Demerara, two sergeants, 5 corporals, one drummer, 4 postholders and 3 byliers, it makes in all 56 men. ”

In the year 1769 is another statement, document No. 279, which is to be found in that same volume, volume 2, of the Case of Venezuela, at page 214, that there were only 24 capable men. Some of these citations are citations that I read the other day in connection with the history of Essequibo.

“ If I could only detach 24 men, together with some Caribs, I would teach them to undertake such exploits : but that many capable men I have not in all. ”

That is in the year 1769 and I think that that is the last reference that I have been able to find in the Records of the Dutch strength. But I want to say a little about what the Spanish strength was in those years and thereafter.

In the year 1761, there is a statement (in the third volume of the Appendix to the British Case at page 69, opposite F) :

“ The sixteen missions at present established are those of Capui, ”

and so on, and it gives all their names —

“ And in the statement corresponding are to be found the men at arms, families, individuals, houses, and churches of each; the 16 containing 1081 men-at-arms — ”

Mr Justice Brewer. — That must include Indians.

Mr Mallet-Prevost. — Yes; it does. It is the citizens of the Missions. This does not include Santo Thomé, and, therefore, it does not even show the whole strength of the Orinoco at all, but it is strong enough for my purposes —

“ 1031 families, 4392 souls, 408 houses, and the churches. ”

The statement that I have just read relates to the years 1761-1763, and does not, as I say, include Santo Thomé. But we have another statement as to that city itself which will be found in the second volume

of the Appendix to the British Case, at page 206, between C and D. It is referring to the City, and it says :

“ Its population, including the garrison of the forts, is 450 persons of both sexes. ”

Another reference (in the third volume of the Appendix to the British Case at page 41, C) relating to the year 1763, states that —

“ The want of provisions is the third powerful reason making impossible the transfer of the city of Guayana. The 535 persons composing the 90 families derive their supplies and livelihood from the scanty products of the 30 small plantations in cultivation. ”

So there are 535 persons then in the city of Santo Thomé without counting Trinidad and without counting any of the Missions.

Lord Justice Collins. — Does it show how many of those are whites or not?

Mr Mallet-Prevost. — It does not say, my Lord.

On page 42, at letter D, of volume 3 of the Appendix to the British Case, relating to the year 1763, it states that

“ The 100 persons of the staff of the fortress, and the 58 militiamen of the company of residents ”, —

shewing 158 as the military force at Santo Thomé in the year 1763.

Now in the second volume of the Venezuelan Case, at pages 354 and 355, there is this further statement relating to that same year and explaining somewhat the distribution : —

“ The population has not only 450 persons, including the troops, as they have informed His Majesty, but 535, as shown in my first part, Chapter 9, No. 91. His Majesty has not been informed with more accuracy in regard to the garrison of said castle, as it does not consist of one Castillian captain, one lieutenant, two standard bearers, and 100 men, but one Castillian Captain, one lieutenant, two standard bearers, one constable, one chaplain, two sergeants of fusileers, two corporals, 12 artillery men, one drummer, and 77 soldiers, making in all 100 men who receive salaries and are employed, according to my exposition, in the first part of Chapter 9 ”.

In the third volume of the Appendix to the Case of Venezuela, at page 382, is the Table to which Mr Justice Brewer called attention yesterday. There are two Tables there, one giving the Villages of Spaniards and of mixed population, showing inhabitants 1305, houses 162, farms 121, and the cattle 4278. Below that is a table referring to the mission villages, — villages of Indians of the Catalan Capuchin missions, showing

a population of 5 273, 773 houses, 1 346 farms, and 30000 head of cattle.

Mr Justice Brewer. — Do you notice that the Table on page 382 is for the year 1766, and that the one on page 383 is for the year 1773?

Mr Mallet-Prevost. — I was just going to call attention to it.

Mr Justice Brewer. — There is quite a difference in that regard.

Mr Mallet-Prevost. — Yes, it was a tremendous increase during those years.

Mr Justice Brewer. — The one is 1766 and the other is 1773.

Mr Mallet-Prevost. — There is a difference of some six years. There was a tremendous increase in that time. That increase I referred to the other day, where it was distinctly referred to as an increase during those years. The cattle were 131 000 or something of that kind in the year 1769. A statement which will be found in the 4th volume of the Appendix to the British Case, at page 43, opposite D, shows that at Santo Thome the population was 540 souls.

In that same volume (volume 4 of the Appendix to the British Case, at page 80, opposite D), is a statement showing that in the year 1771 at Santo Thomé there were 163 houses built of rubble and roofed. Then comes that increase to which I referred a moment ago, and which is reported in this 4th volume of the Appendix to the British Case at page 148 and at page 149. I read from the bottom of page 148 :

“ Afterwards in a letter of the 20th March, 1773, the said Governor rendered an account of the increase of that province, from the year 1766, in which he took possession of his command; and as shown by the statement and return, which he annexed, the said increase consisted in 43 settlements of Spaniards and Indians, and of 8558 inhabitants, 712 houses, 2,899 farms, and 131 963 head of cattle and horses; crediting also, by a certificate, which he inclosed, countersigned by the Royal officer of that Treasury, the receipt therein of 38,803 pesos; which progress he brought before your Majesty's notice to shew his eagerness that in that vast dominion the favourable Resolutions which its natives deserved from your Majesty's Royal Grace might become effectual and hoping that it would earn your Royal approbation. ”

Another statement relating to the year 1773 will be found at page 110 of this same volume 4. I read from opposite D :

“ In thus acting, I have the satisfaction of demonstrating to your Excellency that I have not only succeeded in giving to the settlement and consistency of this province the considerable increase of forty-three villages of Spaniards and of Indians, with more than 200 families of the first-mentioned, brought from the neighbouring provinces — ”

And that accounts in part for the very large increase that there was. Just as at one time they had gone from Santo Thomé off to Venezuela, so they are coming from other Spanish Provinces into this. Then :

“ and about 8000 persons of the last named, that I have forcibly taken from the forests, and from idolatry, to civil and Christian society, but equally in constructing more than 700 houses, nearly 3000 plantations, and increased the breeding of cattle to the extent of 100000 head, and horses besides; but I have also expended for this work more than 7000 pesos of the subsidies and commissions established, which, by reason of the position I hold, I might have put in my pocket since I entered upon the office of Commandant General — ”

he wanted to get credit for his honesty !

Then in the 4th volume of the Appendix to the British Case at page 179, opposite B, relating to the year 1777, is a statement that the garrison of the Province consisted of four veteran companies, three of infantry, with 74 men in each, and one of artillery with 60 men. In that same year, there is a statement as to the population of the province in that same 4th volume of the Appendix to the British Case, at page 178, at E, where it is given as,

“ 4000, taking Spaniards, creoles and negroes, in the whole extent of it, but the number of reduced Indians cannot be much less than 18000. There are about 200000 head of cattle. ”

That is in the year 1777.

The last of these statement will be found in the third volume of the Venezuelan Counter Case Appendix, at page 349, and is the one to which I call attention to show the force that was in the Spanish Curumu fort in the year 1800. That gives the distribution of the garrison, and shows that in all there were 357 soldiers disposable in that Province.

I read yesterday a number of extracts which showed the influence that the Missionaries had upon the Indians and the fact that they became Spanish citizens and the Lord Chief Justice of England was this morning good enough to ask what was done with these Caribs that came into the missions, and I detain the Tribunal one moment longer to read two or three passages which throw some further light upon that subject, and which show the civilizing influence and the methods of these missions. I will not trouble the Tribunal to turn to them.

Lord Russell. — I was rather struck with this, and I wanted an explanation about it. The alternative seemed to be either come into the mission or we will drive you to the back of Godspeed, and that was the policy on which they acted. What I did not see was how they could have done anything effectual straightaway with men taken away from their ordinary modes of life and occupation and habits. It does not seem to me a policy that was practical.

Mr Mallet-Prevost. — At the same time whatever we may think of it in theory it was practical. The evidence showed in 20 years 5 000 of these Caribs from between Cuyuni and Massaruni had been settled in the missions. That is what was done with the Caribs, and here are two or three simple extracts which tell of the daily life of these Indians and which paint a picture that throws some light upon the condition of those missions. I will read a short extract from the third volume of the Venezuelan Counter Case at pages 51 and 52, a statement by Alvarado in the year 1755, where he says :

“ The call for Ave Maria is rung at dawn, when they recite the Litany of the Virgin, pray a little, and say mass. Shortly after, they call for prayers, gathering in the church all the children, maidens and married women who have born their first child, and recite together the Paternoster, Ave Maria, Credo, Commandments, and Articles of Faith in Spanish, with the assistance of the Missionary Father or his coadjutor, should he have any. They spend the day in manual occupations, or in reading books, according to their individual inclination ; dine between 11 and 12, and sleep their siesta.

In the evening the call to prayers is again made, when the same persons meet and repeat the same orisons, in the presence of the Father. In some towns, both in the morning and evening services, prayers are said in the vernacular *Pariagoto*, in order that the congregation may make more rapid progress in the knowledge of the mysteries of our Holy Catholic Faith. This duly performed, they employ the evening in whatever may suit them best, attending to the material interests of the mission and watching over the Indian women who with entire freedom have attained true religion. At sunset they repair to their house, sup before nine o'clock, toll the bell for evening prayers, and before retiring for the night, take a turn around the town to see that their Indians are gathered peacefully and then go to bed until the next morning. ”

Something of a contrast to the picture that we have on the other hand of the dealings of the Dutch ; inciting them to murder and to all kinds of crimes. From the third volume of the Venezuelan Case page 379 I take the following statement relating to the year 1754.

Lord Russell. — I do not understand you to make that charge against the Dutch authority because, if you do, you will be in effect saying that Gravesande was a great hypocrite and you have been treating him as a most reliable person.

Mr Mallet-Prevost. — That is the point I made yesterday and today. It was not the Dutch Authority ; they were individual Dutchmen ; that is what I have been arguing and it is because of that, that our friends have no right to come and establish a Dutch title on that. It was not the

Dutch Government. Your Lordship has very properly pointed it out. That is exactly my point.

In the third volume of the Venezuelan Case at page 376.

“ These clergy try to lead the Indians to establish and maintain good little farms [conucos] for the cultivation of maize, yucca, rice, bananas, and other food products for their own support and for sale to their own profit; and also to induce them to make among themselves in each village a little farm for the Father who assists and directs them. ”

In the second volume of the Venezuelan Case, pages 286 and 287, we have this statement, from the Governor of Guiana, relating to the year 1743.

“ In the settlement of La Purisima Concepcion de Suay on the seventeenth day of the month of February of the year seventeen hundred and forty-three, his Honour, the said Governor and Captain General of these Provinces, said : that whereas in the prosecution of his visit he has arrived at this settlement, where he must investigate how the Indians are managed and governed — ”

I call attention Mr President to the fact this was the civil Governor visiting the missions for the purpose of seeing how the Indians were managed and governed — ”

“ and whether they are aggrieved by some persons in power, military officers or ministers of justice, giving the Indians to understand the Royal recommendations to which they are entitled by the Royal laws, in order that justice may be administered to them; that they may be supported, defended, and receive satisfaction in cash indemnity for the grievances they may have suffered, and justice above all, without any delay, to which end this visit is made; and that his Honour is ready to hear and protect them, and the form and policy under which they are to live, and the advisability thereof for their preservation. Their application to the tilling of the fields, for the increase of provisions in their settlements, so advantageous to their progress, and manufactures, which are commonly of hammocks; and fishing, in which they may engage for their profit; the obligation they have to attend church and learn the Christian doctrine, and be present at the Holy Sacrifice of Mass, and aid in the repair and building of the material church of the settlement, the mission house, and that which it is customary to construct in all Indian settlements under the name of the Royal house, for the care of travellers; that each family shall live in a separate house; that they shall have a community farm of the

most useful products for the common needs, and that these products, owing to the little capacity of the Indians, be distributed and sold with intervention of the Missionary of the settlement for the benefit of the Indians, since there are no councilmen in these settlements, as they are new settlements."

And then finally there is one from Diguja in the second volume of the Venezuelan Case pages 345 and 346 from which I read this :

"The education of the Indians is not the same in all the settlements; in some of them they are not all baptized, when just taken out of the woods, incapable of a Christian education, and only in cases of need they are baptized, but this sacrament is administered to all their children born in the settlement and the infants arriving from the woods. Other Indians are already Christians, but without having forgotten the crowd of vices so common with them, and both sexes remaining naked, out of their natural rusticity and habit, as well as the impossibility to pay for clothing. The Fathers try their best to provide them with iron utensils for the cultivation of their fields. In four or five of the oldest settlements they are dressed, in keeping with the good government of the Missioners, who gather with the greatest care and keep an account of the casave, superabundant with them, send it to the city of Guayana where there is a demand, and out of the proceeds buy clothing for the people in return for their casaves. This recourse is not available for those who are at a greater distance from the fortress, on account of the cost of transportation wiping out any possibility of profit. The Indians of these five settlements are well instructed in the Christian doctrine and sufficiently conversant with the Castillian language. Many of them learn music and play several instruments skilfully, and most of them are applied to the service of the Church, where the solemn functions are carried out with really edifying ceremonies."

I wanted, Mr President, to read these before I closed my speech, because it seemed to me to be somewhat an answer to the question put to me this morning by the Lord Chief Justice of England, and it was in line with what I was saying yesterday in pointing out the difference between the influence exercised by the Spaniards over those Indians that they reclaimed from the forest, and converted into Spanish citizens, and, on the other hand, the influence of these individual Dutch raiders that had no connection with the Dutch Government and were not authorized to incite to murder, raid, and so on, and yet did have that influence and because of that the missions suffered in the way they did suffer.

Mr. President, I have spoken for a great many days. It has been my duty to go through this evidence much more fully, I know, than has been

agreeable either for the Tribunal or for myself, and I am not now going to weary the Tribunal with any resume of what I have said. I have endeavored to present the facts of the case covering the period from the time that the Spaniards first arrived upon the shores of Guiana until this colony of Essequibo was finally transferred to the British, and I have endeavored to do that honestly. If there is any point that is against me and I have not met it I am unconscions of it. Every document that tells of alleged Dutch settlements, of alleged Dutch influence, I have cited in these days, and I have thrown upon its meaning such light as I was able. Without attempting any resume of what all this thing shows I think that I may, just in a word, emphasize this fact, that the Spanish nation took possession of this great territory of Guiana after great labor and great sacrifices. That after a long war with a nation that had been subject to Spain, in the year 1648 Spain was obliged to and did recognize the right of the Dutch to what they then held, and that at that time there was a little trading post with a fort at the island of Kijkoveral.

The history of the next 150 years, down to 1814, is a history that can be told in a word, it is the history on the part of the Dutch of a small struggling colony that never attained any very great measure of success, a colony that at one time attempted to spread itself towards the west along the coast, and that was driven back by the action of Spain; a colony that, at one time, in the interior attempted to push its trade up the Cuyuni and Massaruni rivers and in that space of over a century and a half, maintained for 10 brief years two posts on the lower reaches of the Cuyuni river; and from those posts was driven out. And then, during the closing years of the century, having given up all thought of the coast west of the Moruca, having given up all thought of the interior, abandoned all of its posts, even the one on the Essequibo far up the colony, moved down from the river, away from this region and transferred its body, one might say, to Demerara. On the other hand we have the history of Spanish settlements and control there for a long time. It was a struggling settlement, at times the population very small, but always endeavoring to utilize those lands the way that Spain has utilized her lands elsewhere in the new world, by bringing in the Indians, by making them citizens, and today Spanish Americans (I do not know what the statistics would show as to population, but) choose to so count themselves today. Spanish Americans are a very great many of them, civilized Indians and the descendants of Indians. Spain pursued that plan slowly but surely; that settlement grew, spreading out over these savannas, driving out the slave traders of whatever nation they might be, subduing the Caribs, bringing them into their Missions or driving them forth, driving the Dutch away from the coast, finally locating a fort in a central and strategic point in the interior and controlling that whole region, so that thereafter the name of a Dutchman is not heard.

Mr President, that was the state of affairs when the colony of Essequibo passed into the hands of the British. The story from that point on

will be told by Mr Soley, and I have only one word more to add and that is to thank you, Mr President, and the other members of the Tribunal for having with so much consideration and patience listened to the very long story which I have had to tell.

General Harrison. — We have now about 20 minutes up to the usual time of adjournment, and I beg to request the Tribunal not to insist on Mr Soley proceeding now.

Sir Richard Webster. — Certainly not, we should not think of asking it.

Lord Russell. — It is for the President to express the view of the Tribunal.

Sir Richard Webster. — Surely, Lord Chief Justice, it is not uncommon for Counsel to say they gladly join in wishing Mr Soley should not be asked.

The President. — I knew what the Attorney General had the intention of saying, and I think it was agreed that we shall have our next sitting on Saturday.

General Harrison. — While some of us feel in a mildly protesting mood against using Saturday for work, yet we will not insist on that, and Mr Soley will be prepared to go on, on Saturday morning.

The President. — Then it is adjourned till Saturday.

Sir Richard Webster. — Unfortunately in my absence — I am sorry I had to be away — I understand a question was put I ought to have answered and that is in regard to the authority for the British map. I wish to make the statement now because my learned friends can ask for any information they like or criticize it. I wish to state this clearly because I am responsible in this matter and nobody else.

General Harrison. — Allow me to say, do I understand, Sir Richard proposes to make some statement based on the evidence in the case or some statement outside the case.

Sir Richard Webster. — My statement is based solely on the evidence in the case, and having regard to what has been said and the question put, I may be allowed to make my statement. If the General wishes to criticize it he will be able to do so. It is made absolutely solely on the evidence in the case, and if there is any challenge of it, I can place the fullest information at the disposal of the Tribunal. This map, which we call the first map in the British atlas was prepared under my personal supervision by Major Grant who has signed it. He is the head of the map Department, of the intelligence Department. I determined that there should be from the beginning no doubt as to its being the result of survey, and I state again, that which Sir Robert Reid has stated and which I stated the other day, that except with regard to the course of the Cuyuni south of its junction with the Uruan every physical feature east of Schomburgk's line, by which I mean what my learned friend calls the expanded Schomburgk line has been ascertained by survey; it is not the result of speculation, it is the result of survey. There is no physical feature east of the Schomburgk line to which that observation does not

apply, unless it be a very tiny bit at the extreme source of the Massaruni, and I think that has been surveyed. Would my friend General Harrison kindly turn to the first page of the atlas where the information is given which I am sure was overlooked by my learned friend when he made the statement the other day.

General Harrison. — I beg to assure the Attorney General it has not been overlooked and when Mr Soley comes to discuss it he will have considered what the sources of information are.

The President. — We will take note of what is said by Sir Richard Webster, and then Mr Soley can criticize it.

Sir Richard Webster. — Yes; I do this before Mr Soley speaks, so that he may have the opportunity of doing so.

This is the statement made, it is the fourth paragraph :

“ At the commencement is a Geographical Map which has been specially compiled for this Atlas. It is based primarily on Schomburgk's Surveys, which, however, have been modified where necessary to allow of the insertion of work by later travellers. The Coast Line has been taken from the Admiralty Charts, and this has necessitated moving Schomburgk's positions in the North-Eastern portion of the Map nearly 20 minutes in longitude to the East. Schomburgk's astronomically observed positions in the interior and South of the Colony remain, however, generally unchanged, and thus the Northern portion of the map may possibly be placed too much to the East compared with the Centre and Southern portions. The following Table shows the latitudes and longitudes of certain stations as determined by Schomburgk and as compiled in the map. ”

I need not read through those.

“ Work in addition to that of Sir Robert Schomburgk which has been made use of in the compilation, includes the following.

For detail in the basin of the Yuruari and the positions of the mission stations, from Agustin Codazzi's *Mapa fisico de Venezuela*; the reports of Lopez de la Puente, 1788 and 1789; the maps of F. Carlos de Barcellona, a member of the Capuchin mission, Guiana, 1771 and 1789; and a map prepared to illustrate a description of an excursion made to the Capuchin missions of the Caroni in 1818.

For detail and hill shading of the Upper Massaruni Valley and the Country immediately North of Mount Roraima, a Sketch illustrating the explorations of MR HENRY WHITELEY (*Royal Geographical Journal*, 1884) and for that in the valley of the Cotinga and the country south and south east of Roraima a survey by

MR H. J. PERKINS, made under the direction of Mr Everard im Thurn (Royal Geographical Journal, 1885).

For the details of the Paduairi River, the Karte Brasilien und Venezuela, 1887, Zeitschrift der Gesellschaft für Erdkunde zu Berlin, Bd. XXII, 1887.

CODAZZI's and BIANCONI's maps of Venezuela.

A Sketch by Mr G. D. Bayley, Government surveyor of British Guiana, for a proposed road between the Barama River at Dowokaima Fall, and the Cuyuni at the junction of the A carabisi River, 1896.

A Sketch of a portion of the Cuyuni River between the Aca-rabisi and Yuruari Rivers, by LIEUTENANT E. GODFREY-FAUSSET, Royal Engineers, 1896 (Royal Geographical Journal, 1896).

For detail in the valleys of the Rivers Potaro and Ireng a Survey by Mr C. W. ANDERSON, Government surveyor of British Guiana, 1896.

A sketch showing the routes in the North of the Colony by MR GEORGE G. DIXON, 1894. (Royal Geographical Journal, 1895).

Now, Mr President, I have had made for myself the list of the actual maps which are there summarized and have given it to my learned friends some days ago. I tell them that if they desire any maps sent for from which this atlas was prepared it shall be sent over for them, I will send to England for it. I have given the names of the people who made the maps and the districts to which they refer, and I conclude as I began by stating that there is no geographical feature east of Schomburgk's line that is not ascertained by survey and shown on that map, or rather to be more correct as shown on sheets 1 and 2 in the whole of that map. I mention that in reference to an observation made a few days ago as to the comparison of the one map with the other. If my learned friends wish for any information as to the survey from which it was taken I have given the names of the maps, they are published and they can be checked. They shall have any map they wish for sent over.

(Adjourned till Saturday at 11 o'clock.)

